

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL ACTION NO 16-MD-2738 (FLW) (LHG)

IN RE JOHNSON & JOHNSON :
POWDER PRODUCTS MARKETING, : TRANSCRIPT OF
SALES PRACTICES. : STATUS CONFERENCE
----- : SEPTEMBER 6, 2017

CLARKSON S. FISHER UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NJ 08608

B E F O R E: THE HONORABLE FREDA L. WOLFSON, USDJ
THE HONORABLE LOIS H. GOODMAN, USMJ

A P P E A R A N C E S:

BEASLEY ALLEN, ESQUIRES
BY: P. LEIGH O'DELL, ESQUIRE (ALABAMA)
-and-

ASHCRAFT & GEREL, ESQUIRES
BY: MICHELLE A. PARFITT, ESQUIRE (VIRGINIA)
CHRIS TISI, ESQUIRE (VIRGINIA)
-and-

COHEN, PLACITELLA & ROTH, ESQUIRES
BY: CHRISTOPHER M. PLACITELLA, ESQUIRE
On Behalf of the Plaintiffs Steering Committee

DRINKER, BIDDLE & REATH, ESQUIRES
BY: SUSAN M. SHARKO, ESQUIRE
-and-

SHOOK, HARDY & BACON, ESQUIRES
BY: PATRICK L. OOT, ESQUIRE (WASHINGTON, D.C.)
-and-

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, ESQUIRES
BY: JOHN H. BEISNER, ESQUIRE (WASHINGTON, D.C.)
On behalf of Defendant Johnson & Johnson

* * * * *
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A P P E A R A N C E S C O N T I N U E D:

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-and-
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On behalf of Defendant Imerys Talc America

C E R T I F I C A T E

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 THE CLERK: All rise.

2 JUDGE WOLFSON: Thank you.

3 (Appearances are given.)

4 * * * * *

5 JUDGE WOLFSON: On the record.

6 I think instead of following through in the
7 order of your status letter, which is normally what I
8 do, I think it is better instead to go right to the
9 scope of discovery and what was my intent when I got
10 on the phone with you last week as to what the scope
11 is.

12 Let me start by saying, no, it was not limited
13 to asbestos. So let me make that clear. I'm sorry if
14 I gave some doubt to that. Where I am is, and I can
15 certainly go through each of the ones that the
16 plaintiff has identified, but it is much broader. It
17 includes information or knowledge of J&J as to a
18 number of these things.

19 I think all of this, and part of my reason for
20 broadening the discovery, and maybe I've had some
21 interest in doing so at the beginning as well and
22 perhaps it was being too narrowly construed, but I do
23 think also some of these matters could impact what
24 studies were being done at the time, if there was any
25 influence, who was involved.

1 For instance, if you have whether it's J&J or
2 the other entities somehow involved in other groups
3 that are performing the studies, I always said the
4 issue of bias in the studies is going to be an
5 important issue and I am going to allow these.

6 The only thing we're really not doing right
7 now is specific causation issues. But I would like to
8 go through the topics to make sure what I've got on
9 really the relevance of each one of these.

10 "Cornstarch and/or cornstarch products."

11 What's that about, an alternative?

12 MS. O'DELL: It's a safer alternative for talc
13 in the product. We believe we have the right to
14 discover all of that and our experts need to know that
15 because in many states they will need to opine on what
16 would be a safer alternative design of the product.

17 JUDGE WOLFSON: Okay.

18 "The closure of mines, mills, process,
19 facilities, et cetera."

20 Now, I was curious. Did J&J actually have
21 some mines?

22 MS. O'DELL: Yes, your Honor. There is
23 information regarding decisions to close mines or to
24 not source talc for the talcum powder products because
25 of asbestos and other carcinogens within the ore body.

1 So we want to discover all that. If a mine
2 was closed because of that, and that mine was used as
3 a source for the talcum powder products, we want to
4 discover that.

5 JUDGE WOLFSON: How long ago were those
6 closures?

7 MS. O'DELL: Some in the '70s, some earlier.
8 It depends on the specific mine. But they would have
9 been within the zone of usage for many of the women.

10 JUDGE WOLFSON: That's what my question was.

11 Let's go through all of these and then I'll
12 make some comments.

13 "Drill logs from mines and other documents."

14 These are again the J&J mines?

15 MS. O'DELL: As well as Imerys mines.

16 JUDGE WOLFSON: Okay.

17 Because I know this is under your J&J
18 defendant category. But I'm assuming with regard to
19 Imerys, there is not going to be a dispute about this
20 anyway. Correct?

21 MR. SILVER: I'm sorry. What was the
22 question?

23 JUDGE WOLFSON: It says, "Drill logs from
24 mines and other documents."

25 You never had an issue about it. Correct?

1 MR. SILVER: No, your Honor.

2 JUDGE WOLFSON: This is related to J&J mines.
3 So now it's getting the same kind of things from the
4 J&J mines. Okay.

5 "Meetings with advisory committees or
6 third-party consultants."

7 What does that mean?

8 MS. O'DELL: It relates to consultants or
9 advisory boards that were considering the issue of
10 whether the products cause cancer, and we want to
11 discover those communications in documents. That's
12 what the discovery request was specifically targeted
13 to those issues.

14 JUDGE WOLFSON: Thank you.

15 And then I guess there was a sale of Shower To
16 Shower at some point to Valeant and you are saying if
17 there were documents that would reflect issues related
18 to the product in connection with the sale and how
19 that could impact the sale and if there were such
20 documents reflecting that. Is that what that really
21 is?

22 MS. O'DELL: Yes.

23 JUDGE WOLFSON: Okay.

24 What are the "Board of Director
25 communications"?

1 MS. O'DELL: Well, the specific request was
2 for "Communications of the Board of Directors or
3 subcommittees of the Board of Directors relating to
4 the safety of talcum powder products and specifically
5 the ovarian cancer risks."

6 JUDGE WOLFSON: Okay. I don't know why you
7 wouldn't get that.

8 "Communications with Mr. Zazenski at Imerys."

9 MS. O'DELL: Mr. Zazenski, among other things,
10 wrote a document that suggested cornstarch was a safer
11 alternative for the design of the talcum powder
12 products. And if cornstarch were not substituted for
13 talc, a warning should have been added to the bottle.
14 He is a person that is in a number of documents --

15 JUDGE WOLFSON: Who was he? What was his
16 position?

17 MS. O'DELL: Product safety for Imerys.

18 JUDGE WOLFSON: No longer employed? Is he
19 deceased?

20 MS. O'DELL: He's deceased.

21 MS. ERFLE: He has been deceased since 2008.

22 JUDGE WOLFSON: "The definition of pure talc."

23 MS. O'DELL: It's our position, your Honor,
24 that there is no such thing as pure talc. And to a
25 degree that there have been representations regarding

1 the talc is pure, we want to discover not only the
2 testing -- it would show that talc is not pure -- but
3 also to the degree there are documents that they
4 suggest evidence that talc is pure, we want to know
5 that.

6 On that particular issue, your Honor, let me
7 just make sure.

8 Mr. Tisi, do you have anything to add on that
9 point of pure talc?

10 MR. TISI: I would add, your Honor, that the
11 issue in this case is whether or not the talcum powder
12 product -- and we've had some dispute about this with
13 the defense -- whether or not the talcum powder
14 product can cause cancer.

15 None of the products that they market are pure
16 talc from what we could see in the documents that
17 we've reviewed. And so the issue in the case is their
18 product and not necessarily the talc.

19 JUDGE WOLFSON: Okay.

20 "Contracts between defendants and any entity
21 concerning talc purchased for use in defendants'
22 products."

23 MS. O'DELL: We would like to discover those
24 contracts and specifically are there indemnity clauses
25 that relate to those purchases, i.e., Johnson &

1 Johnson defendants purchasing talc from Imerys and
2 others? Are there indemnity agreements that are a
3 part of that? If there is liability for cases
4 involving ovarian cancer.

5 JUDGE WOLFSON: Where I am at this point is,
6 the general subject matters can be discovered. I'm
7 not going to deal with the exact parameters. I'm
8 going to leave that to your disputes, your specific
9 requests that you can present to Judge Pisano.

10 I am allowing the general discovery requests.
11 I'm not making any ruling today on indemnity
12 agreements or anything of that nature. I'll leave
13 that for the specifics to see what they look like.
14 I'm not so sure that's relevant to where we are today.
15 And certainly some of these things I think would be
16 limited, but the subject matters I'll permit.

17 So now with that you can tee-up up your
18 discovery issues.

19 MR. OOT: Just a point of clarification. So
20 for these subject matters, the general theory is
21 discoverable. But we'll work with Judge Pisano to
22 narrow it?

23 JUDGE WOLFSON: On the scope of it, right. If
24 there are ones that are going beyond or if they're too
25 broad, right, exactly.

1 MS. O'DELL: Your Honor, in relation to that,
2 so we don't get in a situation where we have to
3 relitigate all the specific issues, the direction that
4 you are giving us today is these matters are
5 discoverable --

6 JUDGE WOLFSON: Yes.

7 MS. O'DELL? -- if it relates to ovarian
8 cancer and the talcum powder products increasing the
9 risk of ovarian cancer, then we are allowed to
10 discover that.

11 JUDGE WOLFSON: Yes.

12 MS. O'DELL: And that should proceed. So we
13 don't want to get in a posture today where we leave
14 this conference, we relitigate --

15 JUDGE WOLFSON: That there is no issue about.

16 MS. O'DELL: And so discovery in terms of
17 production documents should proceed. Depositions
18 should proceed.

19 JUDGE WOLFSON: I'm not so sure depositions
20 should proceed. You don't want to depose someone more
21 than once. So if you have disputes about areas that
22 that same person would be asked questions about, I
23 don't want to have that happen. Depositions are a
24 separate question at the moment.

25 I'm trying to deal with the written discovery

1 first. But I am going to give you some timelines
2 today for both written discovery and depositions.

3 MS. O'DELL: Okay. Thank you.

4 JUDGE WOLFSON: Yes, Ms. Sharko.

5 MS. SHARKO: I'm a little confused and I think
6 we need unfortunately a little more clarity.

7 JUDGE WOLFSON: Sure.

8 MS. SHARKO: The areas that you enunciated
9 are, in general, fair game for discovery as it relates
10 to ovarian cancer, and the parties need to work out
11 the parameters of that. It's not everything, every
12 last piece of paper, every last whatever.

13 JUDGE WOLFSON: Nothing is every last piece of
14 paper because as in any discovery we know there are
15 limits to it. So, yes, that's why I'm not ruling on
16 any specifics today.

17 I'm saying the subject matters are
18 appropriate. You have to review what the requests
19 are. You decide if they are overbroad or not and we
20 go from there.

21 MS. SHARKO: And apply the rules of
22 proportionality and all that.

23 JUDGE WOLFSON: All the rules still apply to
24 this case. The rules of civil procedure apply. So
25 that's where we are.

1 Now, with that, let's go back to some of the
2 specific issues that you are raising.

3 Now, I understand you will be re-reviewing I
4 guess the written discovery requests, that some of the
5 prior objections may not apply, and I think you need
6 to do some more conferring.

7 Let me deal with all written discovery first
8 and then I'll talk about depositions with you.

9 Third-party subpoenas. I guess there were
10 some issues about not who is being deposed but the
11 areas that you are identifying for those. Is that
12 correct?

13 MS. O'DELL: In terms of the request, your
14 Honor, I think the only outstanding issue relates to
15 -- there are two actually. The foreign regulatory
16 agencies and what was happening with trade
17 associations in Europe. That was briefed in the joint
18 letter.

19 So what the parties have done, we served
20 subpoenas without those requests that were subject to
21 objection to get things moving. But there was an
22 issue in the joint letter that related to those
23 foreign regulatory and trade associations. And if my
24 memory serves, there were some specific entities that
25 were included in the Colorado School of Mines

1 subpoena.

2 JUDGE WOLFSON: At this point, having the
3 discover master, I'm not going to go into the
4 nitty-gritty of what those are. That's an issue,
5 again, that should be teed-up for Judge Pisano.

6 You've reached agreement with regard to the
7 Bristol-Myers ruling and there is a stipulation I
8 understand that you want to enter with regard to all
9 these cases that are listed in Exhibit 1. But I
10 understand there are a couple of cases for which you
11 still are pursuing the remand on.

12 MS. O'DELL: There are three cases, your
13 Honor. In each of those cases there is a state
14 defendant. So the cases were filed in the resident
15 state of the plaintiff. There is an in-state
16 defendant and --

17 JUDGE WOLFSON: And I guess the argument is
18 going to be whether that's a real defendant or not or
19 simply joined to destroy diversity. So those are
20 going forward.

21 MS. O'DELL: Yes. There are three of those
22 cases.

23 JUDGE WOLFSON: Okay. So we can enter the
24 Exhibit 1.

25 Let me talk for a moment about the

1 Mehaffey-Weber memo. I've read myself the papers that
2 were submitted in connection with this memo which
3 included the affidavit of Mr. Williams and fairly
4 limited briefing frankly on the issue.

5 I must tell you, my initial reaction is that
6 particularly some of the comments that were made on it
7 clearly seem that litigation is out there in some way.
8 I think just on its face, it seems to be a document
9 that could be protected by one of the privileges. But
10 I really don't have quite enough.

11 Second of all, what does concern me, though,
12 there are a lot of other issues involved with it. But
13 one is also I do not believe that the submissions by
14 J&J adequately tell me the protections that were taken
15 from not producing this because this was produced in
16 more than one place is my understanding.

17 MR. OOT: Thank you, your Honor.

18 So our position related to waiver is first
19 prefaced by the violation of 26(b)(5)(B) and I think
20 it's very important. I'm glad that your Honor said
21 the rules apply.

22 But here what's happened is they have
23 essentially taken our privileged document, filed it in
24 this case, and now we have an existing claw back and
25 they continue to violate the rule under 26(b)(5)(B).

1 And now exactly what's happening here, your Honor,
2 they want the Court to jump to whether or not the
3 document is privileged.

4 I would like to actually have a pause first
5 and really realize that 26(b)(5)(B) applies and we are
6 entitled to claw that back that until we have this
7 discussion of whether or not the document is
8 privileged.

9 MR. TISI: Your Honors, Chris Tisi for the
10 plaintiffs.

11 I don't have the language of the order in
12 front of me. It gives the plaintiffs certain
13 protections. If a claw back has been issued, as
14 was done in this case, we reserve the right to bring
15 the matter to the Court, which is exactly what we have
16 done. In fact, it's been on the past three agendas
17 for the Court.

18 I think it's important to remember the reason
19 why this particular document among many was brought to
20 the Court's attention. If you go back to the status
21 conference in February, the issue was whether or not
22 there has been an adequate document production in this
23 case.

24 Your Honor instructed the plaintiffs,
25 instructed me to go back to the defense and say to

1 them, Tell the defense with some particularity the
2 concerns you have with the productions that they've
3 made.

4 So we have this as an example, this 1998 memo
5 as an example of the reasons why we believe that
6 certain documents were not produced in this
7 litigation. So we sent them this letter for that
8 purpose.

9 The reason why it becomes really important is
10 because this document is almost -- I've used the term
11 Rosetta Stone. It really demonstrates, it gives us a
12 snapshot in time, as to what documents were collected,
13 what documents were there in 1998, and we still have
14 not been able to get our arms around it.

15 JUDGE WOLFSON: Let me ask a question. How
16 are you taking care of this issue with the documents
17 that existed in 1998?

18 MR. OOT: So in a letter that -- a copy of a
19 letter that I sent to Mr. Tisi in response to his
20 Friday at 5:30 letter, I outlined all of the efforts
21 that we took to location the documents.

22 So what this issue is, your Honor, they're
23 talking about a cardboard box. We're not necessarily
24 talking about missing documents.

25 JUDGE WOLFSON: I understood what you said.

1 You said the boxes themselves don't exist anymore.
2 We've archived them. We've done different things.

3 What my inquiry really is, is to make sure
4 that everything that was available back in '98 and
5 that's still available is being produced. And if it
6 is not available, a description or explanation as to
7 what happened to it and what the chain of custody was.

8 And so my real issue is, what was done for you
9 to confirm what happened to those documents in this
10 time? I don't know what's happened there. I'm not
11 suggesting today that I'm going to go through this
12 because it's not my job to be the discovery master at
13 the moment.

14 I'm trying to get a feel to give you also some
15 views of what some of my concerns are. So that if you
16 are going to present this to Judge Pisano for a report
17 and recommendation to me, you know the things I want
18 addressed. I don't want this to go on for months.

19 MR. TISI: Your Honor, there is one issue that
20 came up since we initially briefed this. If you go
21 back and take a look at the notes from the last three
22 status conferences, one of the issues that came up,
23 apart from the privilege claims on this letter, was
24 whether or not the documents described in the memo
25 have been produced.

1 JUDGE GOODMAN: Can I stop you? Can you just
2 tell me, is it documents we are talking about or a
3 physical box we're talking about?

4 MR. TISI: I don't care about the boxes. The
5 boxes are irrelevant and candidly that's a bit of a
6 red herring.

7 What happened, if you look at the document,
8 the memo itself, what happened was over a year period
9 of time people went back into the record archives and
10 if you look at paragraph one of the memo it describes
11 this.

12 They went back into the archives, the
13 regulatory archives and the research archives, and
14 they retrieved not only boxes but notebooks, and
15 interviewed people who brought their own files to the
16 table.

17 Now, two things happened: No. 1, is they
18 categorized and they described the boxes:

19 So for Bill Ashton there were something in the
20 range of 44 boxes.

21 For Ms. Galligher there were various notebooks
22 including bi-monthly testing of talc samples.

23 For Mr. Molinar there were his own personal
24 files and eight additional boxes.

25 So what this document does is categorize what

1 was collected. And what was important about this was,
2 it was all related to the issue of whether talc causes
3 cancer, ovarian cancer back in 1997/1998.

4 This other thing that was done was that
5 counsel apparently pulled from the boxes -- and this
6 is in the first paragraph of that document -- pulled
7 from the boxes various documents that related to talc
8 and cancer and marked them. And if you look at
9 footnote 1 of the memo, and I have a copy of it.

10 JUDGE WOLFSON: I have the memo.

11 MR. TISI: If you look at No. 1, if you look
12 at the memo on page 1, it says, "Each has" --

13 MR. OOT: We're in open court and he's reading
14 a privileged document right now. We're still entitled
15 to 26(b)(5)(B).

16 JUDGE WOLFSON: I understand. I have the
17 footnote, though. So all it is, is just the coding
18 system for documents. By the way, frankly, that
19 coding thing is really not protected.

20 MR. TISI: But the point, your Honor, is even
21 if the boxes don't exist anymore as they were at the
22 time, candidly we have some concerns about it because
23 they had preservation requirements back in 1998.

24 JUDGE WOLFSON: By the way, what was this
25 Coker litigation? That's what Mr. Williams put in an

1 affidavit to say why this was done in anticipation of
2 litigation. No one talked to him about his affidavit?

3 That's what you produced in this motion:

4 "Affidavit of Gene Williams. I served as counsel in
5 the matter of Darlene Coker and spouse Ray Coker v.
6 Bill Thames Pharmacy, Inc., which at the time was
7 pending against a number of Johnson & Johnson
8 subsidiaries in the 136th Judicial District Court of
9 Jefferson County, Texas."

10 That's his whole position, that this was done
11 for Coker, and he calls them the "Coker coding
12 sheets."

13 MS. SHARKO: We can find that out. I think no
14 one anticipated actually arguing this motion today,
15 but we'll find that out.

16 MR. TISI: Your Honor, the key point, and I
17 think it's important to bring this out, is that they
18 pulled documents from these files, made photocopies of
19 them. Presumably those photocopies continue to exist.

20 So whether or not the boxes exist or not,
21 those documents that were pulled, we have no way of
22 knowing them until they produce them.

23 JUDGE WOLFSON: My understanding is, they said
24 they are going to produce the documents.

25 MR. TISI: Well, we don't know whether they

1 have or they haven't. This is candidly why this has
2 been a little bit frustrating, because up until the
3 22nd of August, we had been under the impression they
4 provided us with a spreadsheet which was represented
5 to us and represented candidly to your Honor was an
6 accounting of where we could go to recreate the boxes
7 in the production that we already had.

8 So there is an eight or 16 page spreadsheet
9 that talks about Bates range of X to Y. If you go to
10 the documents, this was part of the boxes. And it was
11 keyed to the phrases in this 1998 document which gave
12 us the impression that all we had to do is simply go
13 back into our production, pull those documents, put
14 them in a stack and we would have what's referenced in
15 this 1998 document.

16 We went back. You want to talk about time and
17 labor. We went back. Ms. O'Dell went back and her
18 office pulled a lot of these documents. A lot of them
19 post-dated the memo. A lot of them were things that
20 could not possibly have been in that file.

21 We were representing that to your Honor the
22 past three conferences. We were representing to your
23 Honor that we were working this out. All that was
24 really at issue at the end was the 1998 memo itself.
25 But the documents referenced in the memo, counsel was

1 working it out.

2 On at the 22nd of August, Ms. O'Dell and I got
3 on the phone with Mr. Oot and Ms. Frazier and it was
4 told to us for the very first time that these
5 documents, what was referenced in the spreadsheet was
6 not what was in the boxes.

7 What was referenced in the spreadsheet was,
8 these were the kinds of documents that would have been
9 in the boxes had we had them. We didn't know until
10 about two weeks ago that the boxes did not exist.

11 In the meantime they have been litigating this
12 issue in state court and represented to the state
13 court Judge. There is actually a state court order
14 ordering them to produce the boxes, the notebooks, the
15 files containing this memo. At no point did J&J ever
16 represent to me -- and I went back and looked. I'm
17 pretty careful about this stuff. I went back and
18 looked and said, Could I have missed something?

19 I went back and looked at the status
20 conference reports, at the emails that were sent to
21 me, the spreadsheet, and in each and every instance --
22 and I have them with me if your Honor wants to look at
23 them -- in each and every instance what was
24 represented to me was that the spreadsheet that was
25 provided would allow plaintiffs to recreate what was

1 in those boxes.

2 Why is that important, your Honor? No. 1 it's
3 a snapshot in time of what was known by the company.

4 No. 2, we're very -- and I'll say it
5 outright -- we're very concerned that documents that
6 existed at one time when the company was aware there
7 was an issue relating to talc and ovarian cancer no
8 longer exist.

9 We have asked them -- and I sent a letter last
10 week following up on our conference on the 22nd -- at
11 the very least you should produce to us those
12 documents that were pulled from the boxes and coded as
13 indicated in footnote 1. I got a letter from Mr. Oot
14 this morning that I was reading on my phone as I was
15 coming to court. There was no reference to that
16 request.

17 Your Honor, it's a real concern to us that
18 there was a collection of materials and documents
19 related to the very issues in this case almost
20 20 years ago.

21 JUDGE WOLFSON: I have your argument.

22 MR. OOT: Your Honor, that's just not true,
23 first of all.

24 JUDGE WOLFSON: Tell me what the spreadsheet
25 was.

1 MR. OOT: So when we originally met and
2 conferred, we agreed that we would go back into the
3 legacy archive, which is a very large volume of
4 documents, and we would have a human reviewer go and
5 location ranges where these documents would be located
6 and that's what the spreadsheet is.

7 JUDGE WOLFSON: I don't understand. Help me
8 out here. First of all, if I take the way it's
9 described that the documents back in 1998 were
10 labeled, this coding system was set up for initials
11 that would reflect documents from different
12 individuals. Correct?

13 MR. OOT: Under the memo, yes, your Honor.

14 JUDGE WOLFSON: Which they photocopied. Does
15 that coding system appear anywhere on the documents or
16 in the archives?

17 MR. OOT: No, your Honor.

18 JUDGE WOLFSON: They don't.

19 MR. OOT: No, because of the documents went
20 back into circulation. The documents then get scanned
21 to a very large legacy archive where it's not
22 delineated by box number. Again, we're talking, this
23 is back in 1998, much different than the litigation
24 technology that we are talking about now.

25 JUDGE WOLFSON: I know what 1998 was like. I

1 understand.

2 MR. OOT: It's before I was a lawyer, your
3 Honor.

4 JUDGE WOLFSON: I was a Magistrate Judge at
5 the time. I know how it works. I'm trying to figure
6 out how it was done here. We're not talking the dark
7 ages. So let's be clear about it.

8 I'm trying to figure out what was done to
9 preserve the documents and to label them in some way
10 and identify who they came from and where they were
11 maintained.

12 For instance, there are references here
13 whether documents were -- some individuals kept
14 personal files. Others had them in a more general
15 fashion, and both kinds were being produced.

16 Again, I don't know what the Coker litigation
17 was. We don't know if it was an ovarian cancer case
18 or not back in '98. I have no idea. Does anybody
19 know what the Coker litigation was?

20 MR. TISI: We have not been able to find that
21 out, your Honor.

22 JUDGE WOLFSON: Okay. It would have been nice
23 if Mr. Williams had told us.

24 But we've got some litigation. We're
25 obviously obtaining these documents and at least some

1 of the references would indicate that it was one of
2 the issues of concern. There were discussions of
3 asbestos and other things. Okay. Whether it was one
4 litigation -- I guess you will have to identify at
5 some point when you are talking about the memo. And
6 if it was also the threat of other litigation of why
7 this was being done if you want to have privileges
8 asserted.

9 But that there would be some reasoned way in
10 maintaining the documents particularly if any of these
11 individuals were going to be deposed or were deposed
12 in that litigation, which I don't know or not, what
13 documents they had in connection with their
14 depositions or discovery.

15 I find it hard to believe that everything just
16 went back into some photocopying of some general
17 archive without further description. And I don't know
18 what custodian of records would know if they are still
19 around or not from '98 as to what was done or not.

20 I don't know if any of the individuals
21 continued to then, were given back or maintained their
22 files because it says photocopies were made. I don't
23 know if your archives are the photocopies or the
24 originals that were provided to you. Do you know?

25 MR. OOT: The legacy archive is the legacy

1 archive of all talc-related litigation that was
2 scanned in years before this case was filed.

3 JUDGE WOLFSON: But I guess where I'm going
4 back to and I don't think I'm getting answers to and I
5 think you need to do a better job of is what's
6 reflected at least in the footnote is that they
7 photocopied documents that they received from each of
8 these individuals.

9 So I have two questions: What did they do
10 with the photocopies? What happened to the originals
11 that these individuals maintained? Do you have an
12 answer to that?

13 MR. OOT: It went back to the legacy archive,
14 which was scanned in.

15 JUDGE WOLFSON: You said they went back. The
16 originals went back? You took them from each of the
17 individuals and took custody of them, J&J, instead of
18 maintaining them with the individuals?

19 MR. OOT: From what I understand, the
20 information that was in those boxes was scanned into
21 this very large legacy archive that is searchable
22 and --

23 JUDGE WOLFSON: And what happened to the
24 documents themselves?

25 MR. OOT: I don't know, your Honor.

1 JUDGE WOLFSON: You need an answer to that.
2 That's sufficient information here because that's part
3 of what I'm asking you, too. What happened to them?
4 Were they returned to those individuals that they
5 could still keep their files? Were they destroyed
6 once they were scanned and put in the archives?

7 I want those answers and you are going to give
8 them to them. This is part of how the documents were
9 preserved or not and identifying then where they are.

10 And now what you are telling me is, the way
11 they went into these archives, not by identifying them
12 as coming from a particular individual. Correct?

13 MR. OOT: Correct.

14 JUDGE WOLFSON: Do you have somebody who was
15 around in '98 who is telling you this stuff?

16 MR. OOT: No, your Honor. I'll see what I can
17 do.

18 JUDGE WOLFSON: That's not helpful if you're
19 trying to figure it out today that you think this is
20 what they did, that's not a good answer for me. Maybe
21 there is nobody around anymore that was there in '98.
22 Even Mr. Williams was still around in '98 and is still
23 doing it now.

24 MR. OOT: I know what the endgame is, your
25 Honor. I'm just not familiar with the process of how

1 they got there.

2 JUDGE WOLFSON: From my perspective J&J has
3 not adequately addressed this issue on the documents.
4 The questions that I'm asking you that you don't have
5 answers to give me pause.

6 Now, what else do you want?

7 MR. TISI: There's two things I just want to
8 clarify. As I read the memo, they had boxes of
9 documents there. The lawyers went in and photocopied
10 documents for whatever reason, criteria they used to
11 photocopy documents, and then labeled them in the
12 manner described in footnote 1. Presumably, they
13 retained them. What we originally sought was access
14 to the boxes themselves because we had understood --

15 JUDGE WOLFSON: I know your questions. Look,
16 we don't have to go around the block on this. I've
17 already said it. So everybody is clear, guess what,
18 we're on the record today, so that we're very clear,
19 is exactly what was done in '98.

20 I need somebody if they are still around, and
21 surely the lawyers are that could be helpful in this,
22 or whatever custodians because we know they had to
23 give them instructions. I would assume they gave
24 instructions to some custodians as to what to do.
25 We're talking about two different things.

1 One is, I also don't know whether a decision
2 was made, and the lawyers would have to tell us that,
3 whether a decision was made to only photocopy some of
4 the documents. Because all it says is, "Our coding
5 system for the source of the documents that we had
6 photocopied is as follows."

7 They may have made a selection of documents
8 they wanted to photocopy. It may not have been the
9 entire universe of documents that they were given by
10 these individuals. I need an answer to that. Was it
11 a selective exercise?

12 Two, I understand you said the scanning. But
13 what happened to the documents themselves? Were they
14 returned to the various individuals who had maintained
15 them? Were they destroyed? Were they put somewhere
16 else? We need answers to that.

17 And then, similarly, then what the
18 instructions were, what the custodians of these
19 records did and how they maintained them to either
20 isolate certain ones, identify certain ones, and if
21 that was done and if we can create that?

22 We do have issues here if there was any
23 destruction of documents or not and what exists and
24 that's what they are trying to figure out. So we need
25 answers to those questions.

1 MR. OOT: Yes, your Honor.

2 JUDGE WOLFSON: Okay. Next.

3 Now, again, I would consider that a discovery
4 issue which is something that would go to Judge Pisano
5 to resolve. But I'm telling you, what I'm really
6 trying to do today is, as I said, I think that some of
7 these issues I'm addressing have not been adequately
8 looked at and addressed by counsel.

9 And before presenting them in a helter-skelter
10 way to Judge Pisano and delaying, I want to make sure
11 that I'm telling you the things that I would deem to
12 be relevant and pertinent so that this can be
13 presented to him in a reasoned fashion.

14 I understand I think you have a conference set
15 up in early October with him. You have a month almost
16 to put this together and get it right and get them to
17 him so that he could start moving.

18 The reason for putting a master is expeditious
19 resolution, somebody who is going to give you the
20 time, which obviously Judge Goodman can't give you all
21 the time and that's why we're doing this and why I
22 went this route.

23 I want to save the time in this next month by
24 getting these issues ripe for him and not have him
25 have to go back and tell you I need this and this.

1 And also from my perspective because ultimately if one
2 of you wants to appeal his decision because they are R
3 and Rs, you know where I am coming from.

4 The memo itself is another issue. That you
5 can present to him for an R and R. As I said to you,
6 I think we need more information on that as well, both
7 in the creation of it, and I really wanted to know
8 what this Coker case was. I thought you would come in
9 and tell me today. Is it an ovarian cancer case or
10 was it something else that we were talking about?

11 I don't know what was going on in '98, if
12 there were other litigations being threatened and if
13 they were ovarian cancer cases being threatened or
14 not? I don't know. But that all goes to the idea of
15 the imminent litigation. But on its face it appears
16 to be a document that could be protected.

17 But then I need to know how it was protected
18 and the measures that were undertaken. Not I. Let
19 Judge Pisano do it first. He used to be a Magistrate
20 Judge, too. So I think he will remember those days.

21 The museum artifacts. Have you had some more
22 time to talk about this?

23 MS. SHARKO: Yes. Mr. Placitella and I have
24 been talking. We'll continue to talk. He has new
25 things he wants to build on to resolution of the

1 museum artifacts and make it a broader or more global
2 issue.

3 JUDGE WOLFSON: This is with regard to the
4 other samples and things that you were discussing?

5 MS. SHARKO: Yes. I think I understand what
6 it is he wants and I told him I would hopefully get
7 back to him later this week. I've been handicapped by
8 the hurricane and vacations and watching this issue
9 expand. But I understand I think where he is and
10 hopefully we can resolve it and if we can't then we
11 know who can.

12 JUDGE WOLFSON: Okay.

13 MR. PLACITELLA: So just to give it some
14 background. This is the offer that I made to try to
15 not have the Court deal with the All Writs Act and all
16 those complicated things.

17 This arose because there were lawyers in the
18 asbestos cases who made broad discovery requests not
19 just for what was in the museum but beyond that. And
20 because I have two sides of my brain working here, one
21 that does asbestos cases because I am the co-chair of
22 the Asbestos Litigation Group for all the plaintiffs'
23 lawyers and then liaison counsel in the ovarian cases,
24 I have a universe of knowledge of what the issues are.

25 The issue is, I thought -- and remember I said

1 this on the phone -- I thought the issue was broader
2 than just artifacts because the original request by
3 the asbestos lawyers was more than that.

4 So what I said to Susan was, Look, I'll go to
5 the asbestos lawyers. It will take me many, many
6 hours, probably 30 hours of phone calls to try to work
7 out a deal, so to speak, where all the samples will go
8 in one place and be under one custodian for the
9 plaintiffs in both sets of cases.

10 But don't make me do that twice. Don't make
11 me do that for what's in the museum and then go back
12 and try to do that again, because when I call the
13 lawyer up in California and say, Would you agree to do
14 this, the first question they are going to ask me is,
15 Well, what about the other samples I asked for? And
16 I'm not going to have an adequate response for that.

17 JUDGE WOLFSON: I understand. You are still
18 talking and she's now considering it. Correct?

19 MR. PLACITELLA: Right.

20 JUDGE WOLFSON: So that you can try to come up
21 with some more global agreement to both the museum
22 artifacts as well as the other samples.

23 MR. PLACITELLA: Right.

24 MS. SHARKO: Yes. The relation has been
25 evolving and I understand -- I think we shouldn't lay

1 this all out on the record at this point. We should
2 just try and resolve it.

3 JUDGE WOLFSON: I didn't want to hear all the
4 specifics. You are talking, talk, talk, and then
5 we'll see where we are.

6 But I do understand that the idea is that you
7 are going to work something out that would include all
8 the lawyers so that we are not dealing with some of
9 these issues that are a little more problematic about
10 asking for injunctions with other courts, but instead
11 some cooperative effort among all the lawyers to work
12 this out. So go for it. That's what you should be
13 doing.

14 MR. PLACITELLA: I'm trying. The related
15 issue that I spoke to Susan about a number of times --
16 she didn't want me to bring it up, but I think I
17 should -- is the following.

18 JUDGE WOLFSON: Remember, you want to be
19 friends.

20 MS. SHARKO: I think we can resolve issues.
21 If we can't resolve them, then bring them to the
22 Court. But coming in and giving you an update isn't
23 really productive in my view.

24 MR. PLACITELLA: As part of this process, your
25 Honor, there are documents that have been produced in

1 the asbestos cases that we believe should have been
2 produced here.

3 JUDGE WOLFSON: What are the asbestos cases?

4 MR. PLACITELLA: They are people who are
5 claiming they have mesothelioma from applying and
6 using asbestos containing Johnson & Johnson talc and
7 Shower To Shower. Those are the allegations.

8 JUDGE WOLFSON: That is not an MDL. Correct?

9 MR. PLACITELLA: Correct. They are individual
10 state court cases. There is an MDL, but very few of
11 those are in the MDL which is in Philadelphia.

12 JUDGE WOLFSON: Fine. I've got it. Have a
13 seat.

14 Imerys is working out its issue on samples?

15 MR. SILVER: Judge, we just got the official
16 request on Friday. We are doing investigations. We
17 are meeting and conferring and we will continue to do
18 so.

19 JUDGE WOLFSON: Okay.

20 Now, we can go off the record for a couple of
21 minutes.

22 (Discussion off the record.)

23 * * * * *

24 JUDGE WOLFSON: Let me go on the record.

25 While we were off the record, we discussed

1 some of the timing. And what I've indicated is, at
2 this point I would like the document discovery
3 completed within 60 days and all written discovery
4 within 90 days.

5 I'm now going to identification of experts in
6 areas of expertise and, Ms. Parfitt, I'll hear from
7 you.

8 MS. PARFITT: Thank you, your Honor.

9 Again, the difficulty the plaintiffs have at
10 this moment in providing you a specific date is the
11 issue with regard to the asbestos and the sampling.
12 There will obviously be some experts who that may be
13 an area and a topic that they will be addressing.

14 Again, the scope of where we are going, I
15 think we're going to know a little bit more in the
16 60 days that you are talking about as to which experts
17 that we have identified for certain purposes may be
18 able to go into that area as well.

19 So we wouldn't want to provide the Court with
20 a name and general areas of specialty and leave out a
21 topic, because that would be terribly helpful to the
22 Court. So I think that's what we're trying to
23 identify, your Honor.

24 There has been this lapse of time where we
25 really haven't moved forward. We've tried. I'm not

1 saying there hasn't been effort on both sides. But I
2 think we have a lot of clarity today. I think what
3 your Honor has done last week and today has provided
4 both sides with tremendous clarity as to where we are
5 going, and a lot of the disputes which have prevented
6 us from going forward will be resolved.

7 We do in fact have a meeting with Judge Pisano
8 on October 4th.

9 JUDGE GOODMAN: Don't we have a conference
10 October 5?

11 MS. PARFITT: We do. Judge Pisano could not
12 be available on the 5th. So what we have agreed, we
13 were interested and he was interested in meeting the
14 parties. So we've decided on October 4th and that was
15 confirmed this morning and all parties are available.

16 We will be well prepared to present to Judge
17 Pisano what our issues are. We will all work in
18 earnest to identify where there are discovery disputes
19 remaining now that we have, again, some clarity from
20 the Court.

21 I guess what I would ask at this point is very
22 difficult to say to your Honor having not seen what
23 that additional discovery looks like, because frankly
24 and candidly while there have been efforts by all
25 parties to try to get to the place we are today, there

1 is still a lot that remains.

2 The Court has just given us 60 days, 90 days.
3 I think everybody understands what their marching
4 orders are. We certainly understand the breadth of
5 that. I think Judge Pisano on the 4th will identify
6 areas as well and make recommendations on how far we
7 can go. We'll get that information to our experts.

8 I will advise the Court, we haven't been
9 sitting back and not working with experts. We are.
10 We have in earnest as I represented to the Court a few
11 months ago. We started that process because we are
12 identifying new experts as well.

13 And as your Honor indicated, there may be some
14 the Court is familiar with. But for the most part
15 there will be new experts that the Court hasn't seen
16 reports or heard about. So I think it will take a
17 little bit of time on our part to digest the new
18 documents that we are getting.

19 Some of the depositions that have not been
20 taken, and certainly with regard to the issue of
21 whether or not it's pure talc or not pure talc and
22 the parties dispute that, that's a contested issue and
23 will make a difference to these experts who have to
24 give opinions. I don't know where we are on that.

25 So while I would like in this moment to be

1 able to give a date certain, I think even in another
2 30 days we'll probably be in a better position to
3 report to the Court as to when we might be able to
4 present that with the Court. I don't think it's
5 helpful just to give you names. I would like to be
6 able to give you identity and know myself how far,
7 what the breadth of those reports may be.

8 A lot of what's still in contest here are the
9 test samples of the asbestos and it's a big issue
10 because up to now we've had a talc and ovarian case.
11 The exploration of discovery has been with regard to
12 non-asbestos. That's a big issue here. We have to
13 get some clarity on that. We're doing that. We're
14 moving forward. I'm optimistic that even in 30 days,
15 we're in a better place than where we are today.

16 JUDGE WOLFSON: Okay. Ms. Sharko.

17 MS. SHARKO: I would ask that your Honor set a
18 deadline now. We have been here for almost a year.
19 During that time the plaintiffs have continued to try
20 case after case in Missouri. They've identified the
21 California case. They prepared it. They got experts.
22 They had a California version of a Daubert hearing and
23 tried the case.

24 The California coordinated proceedings started
25 about the same time as this MDL. The same lawyers for

1 the plaintiffs are handling all this litigation.
2 There were asbestos allegations and expert theories in
3 the California case. They have made those allegations
4 in the Missouri cases.

5 The witnesses they want to depose are not
6 people who are going to answer these questions
7 definitively if there are depositions. There will be
8 more documents produced, but they have a lot of
9 documents.

10 And this new issue of sampling, the sampling
11 issue was as to other than the museum thing was raised
12 for the first time in the last week or two in my
13 discussions with Mr. Placitella. And the discovery
14 plaintiffs are talking about identified every sample
15 ever known to human kind and what happened to it going
16 back to the flood. Those requests were served Friday
17 night.

18 So I'm really, really concerned about the
19 delay here and not getting to the ultimate issue,
20 which is why at every hearing I've asked for a Daubert
21 hearing. I know we need experts. Your Honor has set
22 some deadlines for discovery and we will try our best
23 to live up to them and to resolve the remaining issues
24 so we can get to Daubert. But I do think it's fair
25 and appropriate and time for the plaintiffs to

1 identify their experts.

2 MS. PARFITT: Your Honor, if I may be heard on
3 one point of clarification.

4 The California trial I was trial case there as
5 well. The California case did not involve asbestos.
6 I did want there to be clarity there. It did not
7 involve asbestos.

8 Your Honor, the point that Ms. Sharko -- Ms.
9 Sharko makes my argument. With regard to the
10 discovery that your Honor has just discussed with us
11 with great clarity, the discovery issues that your
12 Honor has had with Judge Pisano will move us forward.
13 We are not interested in protracting.

14 Your Honors have not just one case in front of
15 them. You have all of the federal cases that are
16 being filed across this country. There will be some
17 with asbestos, some without. And Your Honor I think
18 has approached this in the right way. You don't want
19 redo. You want depositions that are taken one time,
20 hopefully not twice. You want experts that are taken
21 one time, hopefully not twice.

22 We will work in earnest to do that. There is
23 no reason for us to delay. Your Honor, we have
24 clients who are dying. So if there is any party who
25 is interested in the reports we are and I don't want

1 our reluctance or my inability to state at this moment
2 when we will produce those experts.

3 JUDGE WOLFSON: Remember, I'm not talking
4 about expert reports. All I'm talking about was
5 identifying experts and the subjects on which they are
6 going to opine. I'm not asking for their opinions.

7 So I would like to see those experts
8 identified and the subjects on which -- look, I
9 understand by the time they submit their report, there
10 may be additional things that they'll want to talk
11 about.

12 I'm not going to limit you in that first
13 identification you may not have identified an area and
14 now you've decided that person does want to talk about
15 this. When you give the report, that's the final
16 notice of what they're saying. So that's okay. So
17 don't feel that you are going to be stuck and that's
18 what your concern is. You're not.

19 I want to have those experts identified and
20 the general subjects within 60 days.

21 MS. PARFITT: Your Honor, two questions.

22 JUDGE WOLFSON: Yes.

23 MS. PARFITT: The identity of the experts,
24 their specialty, and in general are you talking like a
25 paragraph of what they might be testifying to?

1 JUDGE WOLFSON: I'm not even talking about a
2 real summary of their opinions here. You are going to
3 talk about the areas of expertise, and if that
4 particular expert is going to talk about talc causing
5 ovarian cancer, whatever, if this one is going to talk
6 about asbestos fibers can cause ovarian cancer, if
7 this one is going to talk about an analysis of talc
8 and whether it's pure or not, whatever, so that we
9 understand those subjects they are discussing without
10 giving me their actual opinion.

11 MS. PARFITT: Second question: Are the
12 defendants in a position then to also identify simply
13 names?

14 JUDGE WOLFSON: Not until they see yours
15 because they want to know what they have to respond
16 to. It's always defendants are second.

17 MS. PARFITT: I understand that. But will
18 there be 30 days thereafter that the defendants --

19 JUDGE WOLFSON: I'll give them a date once you
20 identify yours when they come in and they'll know they
21 have to be prepared for that. To some extent they may
22 not even know until they see your reports, though. So
23 we have to talk about that, how it works. At least
24 they will know the areas.

25 MS. PARFITT: The reason I say that, your

1 Honor, is the argument that counsel has that certainly
2 we should know who those people are, they know the
3 general areas and topics that have been presented in
4 these cases, too. I understand we go first. I
5 understand that completely.

6 JUDGE WOLFSON: I think there may be some new
7 areas as you've identified. So what's been tried in
8 Missouri or what's been tried in California may not
9 be. It's only a subset of what you might be doing.
10 So we need to know what that is.

11 That's what I'm giving you.

12 We can go off the record.

13 (Discussion off the record.)

14 * * * * *

15 JUDGE WOLFSON: Let's go back on the record.
16 You want to discuss the special master order that you
17 have been conferring on.

18 MS. SHARKO: Yes. We had met and conferred --

19 JUDGE WOLFSON: Do you have a copy for me?

20 MS. SHARKO: Yes.

21 That's the defense version with the
22 plaintiffs' red lines from last night and we have
23 resolved everything except for two sets of red lines.
24 "Resolve" meaning either we accept their red lines or
25 we've agreed on compromised language.

1 The two areas at issue are on page 2 of the
2 draft. The first one is in the second full paragraph.
3 The plaintiffs wants all hearings before Judge Pisano
4 to be stenographically recorded by a court reporter.
5 The defense feeling is that that's expensive and --

6 JUDGE WOLFSON: Oh, please. Look at the case
7 we're talking about. On this one I think it makes
8 sense. If there are certain things that Judge Pisano
9 prefers he wants to do informally, I'll leave that up
10 to him.

11 But anything that he thinks that he's either
12 formally ruling on or he wants to hear argument from
13 you on, then there should be a court reporter
14 available because also if there is ultimately to be a
15 review -- I don't know if you've identified Judge
16 Goodman or myself as the one -- we want to know what
17 happened.

18 So I think the way it should be written is, I
19 think it's subject to Judge Pisano, again, as I said,
20 because there are lots of things we do here even
21 informally that we want to resolve.

22 So modify language. But I think if it's going
23 to be in the sense of a kind of motion practice or
24 whatever and you are looking for rulings and he may
25 make them orally, yes, definitely have a court

1 reporter.

2 MS. SHARKO: Okay. So, "May be
3 stenographically recorded by a court reporter subject
4 to the discretion of the special master"?

5 MS. O'DELL: Or, your Honor, "at the request
6 of the parties." If it's an issue that's hotly
7 contested and we believe it likely will be before you,
8 your Honor, we'll place you in the order and --

9 MS. SHARKO: I'm okay with it.

10 JUDGE WOLFSON: That's fine.

11 MS. O'DELL: If we request it, we would like
12 it to be recorded because obviously sometimes we can
13 hear the same conversation --

14 MS. SHARKO: I agreed to that.

15 JUDGE WOLFSON: She agreed to that language as
16 requested by the parties.

17 MS. O'DELL: Okay.

18 JUDGE WOLFSON: Next.

19 MS. SHARKO: The second issue is at the bottom
20 of the page. Judge Pisano told us in our conference
21 with him that he wanted the ability to speak ex parte
22 to the parties. The defendants consent to that. We
23 put that in the order. The plaintiffs want to
24 prohibit ex parte communications.

25 MS. O'DELL: Your Honor, if Judge Pisano would

1 like to have an ex parte conversation, we would like
2 him to just let the parties know whether it's either
3 side and have an agreement of the parties in order to
4 do that.

5 JUDGE WOLFSON: I'm in agreement with that.
6 Maybe you want to phrase it a little differently
7 because it makes it sound bad. We do it the reverse
8 to say, "The special master may communicate ex parte
9 with any attorney with the agreement of the parties."

10 MS. O'DELL: That's fine, your Honor. Thank
11 you.

12 JUDGE WOLFSON: Otherwise, it sounds like
13 they're really taking him to task, though.

14 MS. ERFLE: Your Honor, does that mean then
15 one party has veto power over? The way it's worded,
16 if I understand it, the Judge can make the request and
17 one party can say, No, we don't want you doing that?
18 I think if it's a heads-up, I understand that. I
19 don't think we should control Judge Pisano that way.

20 JUDGE WOLFSON: I understand.

21 JUDGE GOODMAN: I think it's up to Judge
22 Pisano. And if he gives notice he may be
23 communicating with the parties, I think that should be
24 enough.

25 MS. O'DELL: Your Honor, we would just like if

1 it's an issue, the opportunity to have notice and to
2 object and --

3 JUDGE WOLFSON: And let him decide.
4 Absolutely. It doesn't simply mean, I'm telling you
5 I'm doing this and goodbye. You have the right to
6 tell him why you think that it's not a good idea, then
7 it's up to him to decide weighing that. So change
8 your language.

9 MS. SHARKO: So I just want to understand how
10 this works. So if Judge Pisano decides he wants to
11 talk to Ms. O'Dell about some issue or get
12 clarification, before he can do that, he has to call
13 me and ask me if I have an objection to that?

14 JUDGE WOLFSON: That's only for something
15 substantive. If it's obviously like, I'm missing a
16 document, he can have his assistant call and say, I
17 didn't get this. Can you send it to me again? Or I
18 would like a courtesy copy.

19 No, no one needs notice on that. If there is
20 a substantive discussion that he for some reason wants
21 to have ex parte, we all understand. If it's not, if
22 it's basically ministerial, no, he doesn't have to
23 give notice.

24 By the way, I don't think he will be the one
25 making the phone call anyway at that point. It will

1 probably be his assistant. If there is any
2 substantive discussion, there should notice given so
3 that anyone could object if they think appropriate.

4 Next. What else?

5 MS. O'DELL: There is a few more changes we
6 agreed to before the conference that we have reached
7 agreement and we'll provide a revised version to the
8 Court.

9 JUDGE WOLFSON: Okay. Everything else is
10 good?

11 MS. SHARKO: Yes.

12 JUDGE WOLFSON: Wonderful. So then if you can
13 do that and we can get it entered, then we know that
14 you're ready to go. So we'll enter the order

15 We can go off the record.

16 (Discussion off the record.)

17 (Proceedings concluded.)

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C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

S/Vincent Russoniello
Vincent Russoniello, CCR
Certificate No. 675

	6	24:20, 40:11 agree [1] - 35:13 agreed [6] - 25:2, 39:12, 46:25, 48:14, 48:15, 51:6 agreement [6] - 14:6, 35:21, 49:3, 49:5, 49:9, 51:7 agreements [2] - 10:2, 10:12 ALABAMA [1] - 1:13 allegations [3] - 37:7, 42:2, 42:3 ALLEN [1] - 1:12 allow [2] - 5:5, 23:25 allowed [1] - 11:9 allowing [1] - 10:10 almost [4] - 17:10, 24:19, 32:15, 41:18 alternative [4] - 5:11, 5:12, 5:16, 8:11 America [1] - 2:13 AN [1] - 3:9 analysis [1] - 45:7 ANN [1] - 2:12 answer [5] - 28:12, 29:1, 29:20, 31:10, 42:6 answers [5] - 28:4, 29:7, 30:5, 31:16, 31:25 anticipated [1] - 21:14 anticipation [1] - 21:1 anyway [2] - 6:20, 50:25 apart [1] - 18:23 appeal [1] - 33:2 appear [1] - 25:15 appearances [1] - 4:3 applies [1] - 16:5 apply [5] - 12:21, 12:23, 12:24, 13:5, 15:21 applying [1] - 37:5 approached [1] - 43:18 appropriate [3] - 12:18, 42:25, 51:3 archive [7] - 25:3, 25:21, 27:17, 27:25, 28:1, 28:13, 28:21 archived [1] - 18:2 archives [8] - 19:9, 19:12, 19:13, 25:16, 27:23, 29:6, 29:11 area [3] - 38:13, 38:18, 44:13 areas [11] - 11:21, 12:8,	13:11, 38:6, 38:20, 40:6, 45:3, 45:24, 46:3, 46:7, 47:1 arguing [1] - 21:14 argument [5] - 14:17, 24:21, 43:9, 46:1, 47:12 arms [1] - 17:14 arose [1] - 34:17 ARPS [1] - 1:21 artifacts [4] - 33:21, 34:1, 35:2, 35:22 asbestos [18] - 4:13, 5:25, 27:3, 34:18, 34:21, 35:3, 35:5, 37:1, 37:3, 37:6, 38:11, 41:9, 41:12, 42:2, 43:5, 43:7, 43:17, 45:6 Asbestos [1] - 34:22 ASHCRAFT [1] - 1:14 Ashton [1] - 19:19 asserted [1] - 27:8 assistant [2] - 50:16, 51:1 associations [2] - 13:17, 13:23 assume [1] - 30:23 assuming [1] - 6:18 attention [1] - 16:20 attorney [3] - 49:9, 52:14, 52:16 August [2] - 22:3, 23:2 available [6] - 18:4, 18:5, 18:6, 39:12, 39:15, 47:14 aware [1] - 24:6 AXELROD [2] - 2:7, 2:7
'70s [1] - 6:7 '98 [8] - 18:4, 26:18, 27:19, 29:15, 29:21, 29:22, 30:19, 33:11	6 [1] - 1:5 60 [4] - 38:3, 38:16, 40:2, 44:20 609 [1] - 1:25 675 [1] - 52:24		
0	7		
08608 [1] - 1:8	753 [1] - 3:8		
1	9		
1 [9] - 14:9, 14:24, 19:17, 20:9, 20:11, 20:12, 24:2, 24:13, 30:12 136th [1] - 21:8 16 [1] - 22:8 16-MD-2738(FLW)(LHG [1] - 1:2 1997/1998 [1] - 20:3 1998 [10] - 17:4, 17:13, 17:17, 20:23, 22:11, 22:15, 22:24, 25:9, 25:23, 25:25	90 [2] - 38:4, 40:2		
	A		
	ability [1] - 48:21 able [6] - 17:14, 26:20, 38:18, 41:1, 41:3, 41:6 ABOVE [1] - 3:11 ABOVE-ENTITLED [1] - 3:11 absolutely [1] - 50:4 accept [1] - 46:24 access [1] - 30:13 accounting [1] - 22:6 accurate [1] - 52:9 ACCURATE [1] - 3:9 Act [1] - 34:15 ACTION [1] - 1:2 action [2] - 52:15, 52:17 actual [1] - 45:10 add [2] - 9:8, 9:10 added [1] - 8:13 additional [3] - 19:24, 39:23, 44:10 addressed [3] - 18:18, 30:3, 32:8 addressing [2] - 32:7, 38:13 adequate [2] - 16:22, 35:16 adequately [3] - 15:14, 30:3, 32:7 advise [1] - 40:8 advisory [2] - 7:5, 7:9 Affidavit [1] - 21:4 affidavit [3] - 15:3, 21:1, 21:2 agencies [1] - 13:16 agendas [1] - 16:16 ages [1] - 26:7 ago [4] - 6:5, 23:10,		
2			
2 [2] - 24:4, 47:1 20 [1] - 24:20 2008 [1] - 8:21 2017 [1] - 1:5 22nd [3] - 22:3, 23:2, 24:10 26(b)(5)(B [2] - 15:19, 16:5 26(b)(5)(B) [2] - 15:25, 20:15 28 [1] - 3:8			
3			
30 [4] - 35:6, 41:2, 41:14, 45:18			
4			
402 [1] - 1:8 44 [1] - 19:20 4th [3] - 39:8, 39:14, 40:5			
5			
5 [1] - 39:10 588-9516 [1] - 1:25 5:30 [1] - 17:20 5th [1] - 39:12			
			B
			background [1] - 34:14 BACON [1] - 1:19 bad [1] - 49:7 Bates [1] - 22:9 BE [1] - 3:9 BEASLEY [1] - 1:12 becomes [1] - 17:9 beginning [1] - 4:21 Behalf [2] - 1:17, 2:8 behalf [2] - 1:22, 2:13 BEISNER [1] - 1:21 best [1] - 42:22 better [4] - 4:8, 28:5, 41:2, 41:15

<p> between [1] - 9:20 beyond [2] - 10:24, 34:19 bi [1] - 19:22 bi-monthly [1] - 19:22 bias [1] - 5:4 BIDDLE [1] - 1:18 big [2] - 41:9, 41:12 Bill [2] - 19:19, 21:6 bit [4] - 19:5, 22:2, 38:15, 40:17 block [1] - 30:16 Board [3] - 7:24, 8:2, 8:3 boards [1] - 7:9 body [1] - 5:25 bottle [1] - 8:13 bottom [1] - 48:19 box [3] - 17:23, 19:3, 25:22 boxes [22] - 18:1, 19:4, 19:5, 19:14, 19:18, 19:20, 19:24, 20:5, 20:7, 20:21, 21:20, 22:6, 22:10, 23:6, 23:9, 23:10, 23:14, 24:1, 24:12, 28:20, 30:8, 30:14 brain [1] - 34:20 breadth [2] - 40:4, 41:7 briefed [2] - 13:17, 18:20 briefing [1] - 15:4 bring [4] - 16:14, 21:17, 36:16, 36:21 Bristol [1] - 14:7 Bristol-Myers [1] - 14:7 broad [2] - 10:25, 34:18 broadening [1] - 4:20 broader [3] - 4:16, 34:1, 35:1 brought [2] - 16:19, 19:15 build [1] - 33:25 BY [10] - 1:13, 1:14, 1:16, 1:18, 1:20, 1:21, 2:6, 2:7, 2:10, 2:12 </p>	<p> 45:6 candidly [5] - 19:5, 20:22, 22:1, 22:5, 39:24 carcinogens [1] - 5:25 cardboard [1] - 17:23 care [2] - 17:16, 19:4 careful [1] - 23:17 case [21] - 9:11, 9:17, 12:24, 15:24, 16:14, 16:23, 24:19, 26:17, 28:2, 33:8, 33:9, 41:10, 41:20, 41:21, 41:23, 42:3, 43:4, 43:5, 43:14, 47:6 cases [18] - 10:3, 14:9, 14:10, 14:12, 14:13, 14:14, 14:22, 33:13, 34:18, 34:21, 34:23, 35:9, 37:1, 37:3, 37:10, 42:4, 43:15, 46:4 categorize [1] - 19:25 categorized [1] - 19:18 category [1] - 6:18 causation [1] - 5:7 causes [1] - 20:2 causing [1] - 45:4 CCR [3] - 1:24, 3:16, 52:24 certain [7] - 16:12, 17:6, 31:20, 38:17, 41:1, 47:8 certainly [5] - 4:15, 10:15, 40:4, 40:20, 46:1 Certificate [1] - 52:24 Certified [1] - 52:7 CERTIFIED [1] - 3:9 certify [2] - 52:8, 52:13 cetera [1] - 5:19 chain [1] - 18:7 chair [1] - 34:21 change [1] - 50:7 changes [1] - 51:5 Chris [1] - 16:9 CHRIS [1] - 1:15 CHRISTOPHER [1] - 1:16 circulation [1] - 25:20 CIVIL [1] - 1:2 civil [1] - 12:24 claiming [1] - 37:5 claims [1] - 18:23 clarification [3] - 10:19, 43:3, 50:12 clarify [1] - 30:8 </p>	<p> clarity [7] - 12:6, 39:2, 39:4, 39:19, 41:13, 43:6, 43:11 CLARKSON [1] - 1:7 clauses [1] - 9:24 claw [3] - 15:24, 16:6, 16:13 clear [4] - 4:13, 26:7, 30:17, 30:18 clearly [1] - 15:7 CLERK [1] - 4:1 clients [1] - 43:24 close [1] - 5:23 closed [1] - 6:2 closure [1] - 5:18 closures [1] - 6:6 co [1] - 34:21 co-chair [1] - 34:21 coded [1] - 24:12 coding [6] - 20:17, 20:19, 21:11, 25:10, 25:15, 31:4 COHEN [1] - 1:16 Coker [8] - 20:25, 21:5, 21:11, 26:16, 26:19, 33:8 collected [2] - 17:12, 20:1 collection [1] - 24:18 Colorado [1] - 13:25 coming [4] - 24:15, 29:12, 33:3, 36:22 comments [2] - 6:12, 15:6 Committee [1] - 1:17 committees [1] - 7:5 communicate [1] - 49:8 communicating [1] - 49:23 communications [4] - 7:11, 7:25, 8:8, 48:24 Communications [1] - 8:2 company [2] - 24:3, 24:6 completed [1] - 38:3 completely [1] - 46:5 complicated [1] - 34:16 compromised [1] - 46:25 concern [4] - 15:11, 24:17, 27:2, 44:18 concerned [2] - 24:5, 42:18 concerning [1] - 9:21 </p>	<p> concerns [3] - 17:2, 18:15, 20:22 concluded [1] - 51:17 CONFERENCE [1] - 1:4 conference [8] - 11:14, 16:21, 23:20, 24:10, 32:14, 39:9, 48:20, 51:6 conferences [2] - 18:22, 22:22 conferred [2] - 25:2, 46:18 conferring [3] - 13:6, 37:17, 46:17 confirm [1] - 18:9 confirmed [1] - 39:15 confused [1] - 12:5 connection [3] - 7:18, 15:2, 27:13 consent [1] - 48:22 consider [1] - 32:3 considering [2] - 7:9, 35:18 construed [1] - 4:22 consultants [2] - 7:6, 7:8 containing [2] - 23:15, 37:6 contest [1] - 41:8 contested [2] - 40:22, 48:7 continue [4] - 15:25, 21:19, 33:24, 37:17 continued [2] - 27:21, 41:19 contracts [2] - 9:20, 9:24 control [1] - 49:19 conversation [2] - 48:13, 49:1 cooperative [1] - 36:11 coordinated [1] - 41:24 copy [4] - 17:18, 20:9, 46:19, 50:18 cornstarch [4] - 5:10, 8:10, 8:12 correct [9] - 6:20, 6:25, 13:12, 25:12, 29:12, 29:13, 35:18, 37:8, 37:9 COUGHLIN [1] - 2:9 counsel [8] - 20:5, 21:4, 22:25, 32:8, 34:23, 46:1, 52:14, 52:16 country [1] - 43:16 County [1] - 21:9 couple [2] - 14:10, 37:20 </p>
C			
<p> California [8] - 35:13, 41:21, 41:22, 41:24, 42:3, 43:4, 43:5, 46:8 cancer [16] - 7:10, 8:5, 9:14, 10:4, 11:8, 11:9, 12:10, 20:3, 20:8, 24:7, 26:17, 33:9, 33:13, 45:5, </p>			

<p>COURT [3] - 1:1, 1:25, 3:16</p> <p>Court [19] - 16:2, 16:15, 16:17, 21:8, 34:15, 36:22, 38:19, 38:22, 39:20, 40:2, 40:8, 40:10, 40:14, 40:15, 41:3, 41:4, 51:8, 52:7</p> <p>court [10] - 20:13, 23:12, 23:13, 24:15, 37:10, 47:4, 47:13, 47:25, 48:3</p> <p>Court's [1] - 16:20</p> <p>courtesy [1] - 50:18</p> <p>COURTHOUSE [1] - 1:7</p> <p>courts [1] - 36:10</p> <p>create [1] - 31:21</p> <p>creation [1] - 33:7</p> <p>criteria [1] - 30:10</p> <p>CRR [1] - 1:24</p> <p>curious [1] - 5:20</p> <p>custodian [2] - 27:18, 35:8</p> <p>custodians [3] - 30:22, 30:24, 31:18</p> <p>custody [2] - 18:7, 28:17</p>	<p>decisions [1] - 5:23</p> <p>deem [1] - 32:11</p> <p>defendant [4] - 6:18, 14:14, 14:16, 14:18</p> <p>Defendant [3] - 1:22, 2:8, 2:13</p> <p>defendants [6] - 9:20, 10:1, 45:12, 45:16, 45:18, 48:22</p> <p>defendants' [1] - 9:21</p> <p>defense [5] - 9:13, 16:25, 17:1, 46:21, 47:5</p> <p>definitely [1] - 47:25</p> <p>definition [1] - 8:22</p> <p>definitively [1] - 42:7</p> <p>degree [2] - 8:25, 9:3</p> <p>delay [2] - 42:19, 43:23</p> <p>delaying [1] - 32:10</p> <p>delineated [1] - 25:22</p> <p>demonstrates [1] - 17:11</p> <p>depote [2] - 11:20, 42:5</p> <p>deposed [3] - 13:10, 27:11</p> <p>depositions [9] - 11:17, 11:19, 11:23, 12:2, 13:8, 27:14, 40:19, 42:7, 43:19</p> <p>described [4] - 18:24, 19:18, 25:9, 30:12</p> <p>describes [1] - 19:10</p> <p>description [2] - 18:6, 27:17</p> <p>design [2] - 5:16, 8:11</p> <p>destroy [1] - 14:19</p> <p>destroyed [2] - 29:5, 31:15</p> <p>destruction [1] - 31:23</p> <p>difference [1] - 40:23</p> <p>different [4] - 18:2, 25:11, 25:23, 30:25</p> <p>differently [1] - 49:6</p> <p>difficult [1] - 39:22</p> <p>difficulty [1] - 38:9</p> <p>digest [1] - 40:17</p> <p>direction [1] - 11:3</p> <p>Director [1] - 7:24</p> <p>Directors [2] - 8:2, 8:3</p> <p>discover [8] - 5:14, 6:1, 6:4, 7:11, 9:1, 9:23, 11:10, 14:3</p> <p>discoverable [2] - 10:21, 11:5</p> <p>discovered [1] - 10:6</p>	<p>discovery [25] - 4:9, 4:20, 7:12, 10:10, 10:18, 11:16, 11:25, 12:2, 12:9, 12:14, 13:4, 13:7, 18:12, 27:14, 32:3, 34:18, 38:2, 38:3, 39:18, 39:23, 41:11, 42:13, 42:22, 43:10, 43:11</p> <p>discretion [1] - 48:4</p> <p>discuss [1] - 46:16</p> <p>discussed [2] - 37:25, 43:10</p> <p>discussing [2] - 34:4, 45:9</p> <p>discussion [6] - 16:7, 37:22, 46:13, 50:20, 51:2, 51:16</p> <p>discussions [2] - 27:2, 42:13</p> <p>dispute [3] - 6:19, 9:12, 40:22</p> <p>disputes [4] - 10:8, 11:21, 39:5, 39:18</p> <p>District [1] - 21:8</p> <p>DISTRICT [2] - 1:1, 1:1</p> <p>diversity [1] - 14:19</p> <p>document [17] - 8:10, 15:8, 15:23, 16:3, 16:7, 16:19, 16:22, 17:10, 19:7, 19:25, 20:6, 20:14, 22:11, 22:15, 33:16, 38:2, 50:16</p> <p>documents [61] - 6:13, 6:24, 7:11, 7:17, 7:20, 8:14, 9:3, 9:16, 11:17, 17:6, 17:12, 17:13, 17:16, 17:21, 17:24, 18:9, 18:24, 19:2, 20:7, 20:18, 21:18, 21:21, 21:24, 22:10, 22:13, 22:18, 22:25, 23:5, 23:8, 24:5, 24:12, 24:18, 25:4, 25:5, 25:9, 25:11, 25:15, 25:19, 25:20, 26:9, 26:13, 26:25, 27:10, 27:13, 28:7, 28:24, 29:8, 30:3, 30:9, 30:10, 30:11, 31:4, 31:5, 31:7, 31:9, 31:13, 31:23, 36:25, 40:18, 42:8, 42:9</p> <p>done [16] - 4:24, 13:19, 16:14, 16:16, 18:2, 18:8, 20:4, 21:1, 21:10, 26:6,</p>	<p>26:8, 27:7, 27:19, 30:19, 31:21, 39:3</p> <p>DOTRO [1] - 2:10</p> <p>doubt [1] - 4:14</p> <p>draft [1] - 47:2</p> <p>drill [1] - 6:13</p> <p>Drill [1] - 6:23</p> <p>DRINKER [1] - 1:18</p> <p>DUFFY [1] - 2:9</p> <p>during [1] - 41:19</p> <p>dying [1] - 43:24</p>
<p>D</p>			<p>E</p>
<p>D.C [3] - 1:20, 1:21, 2:6</p> <p>dark [1] - 26:6</p> <p>Darlene [1] - 21:5</p> <p>date [4] - 38:10, 41:1, 45:19, 52:11</p> <p>dated [1] - 22:19</p> <p>Daubert [3] - 41:22, 42:20, 42:24</p> <p>days [10] - 33:20, 38:3, 38:4, 38:16, 40:2, 41:2, 41:14, 44:20, 45:18</p> <p>deadline [1] - 41:18</p> <p>deadlines [1] - 42:22</p> <p>deal [5] - 10:7, 11:25, 13:7, 34:15, 35:7</p> <p>dealing [1] - 36:8</p> <p>deceased [3] - 8:19, 8:20, 8:21</p> <p>decide [3] - 12:19, 50:3, 50:7</p> <p>decided [2] - 39:14, 44:14</p> <p>decides [1] - 50:10</p> <p>decision [3] - 31:1, 31:3, 33:2</p>			<p>early [1] - 32:15</p> <p>earnest [3] - 39:18, 40:10, 43:22</p> <p>EAST [1] - 1:8</p> <p>effort [2] - 36:11, 39:1</p> <p>efforts [2] - 17:20, 39:24</p> <p>eight [2] - 19:24, 22:8</p> <p>either [4] - 31:19, 46:24, 47:11, 49:2</p> <p>emails [1] - 23:20</p> <p>employed [1] - 8:18</p> <p>employee [2] - 52:14, 52:16</p> <p>end [1] - 22:24</p> <p>endgame [1] - 29:24</p> <p>enter [3] - 14:8, 14:23, 51:14</p> <p>entered [1] - 51:13</p> <p>entire [1] - 31:9</p> <p>entities [2] - 5:2, 13:24</p> <p>ENTITLED [1] - 3:11</p> <p>entitled [2] - 16:6, 20:14</p> <p>entity [1] - 9:20</p> <p>enunciated [1] - 12:8</p> <p>ERFLE [3] - 2:12, 8:21, 49:14</p> <p>ESQUIRE [13] - 1:13, 1:14, 1:15, 1:16, 1:18, 1:20, 1:21, 2:6, 2:7, 2:10, 2:10, 2:12, 2:12</p> <p>ESQUIRES [10] - 1:12, 1:14, 1:16, 1:18, 1:19, 1:21, 2:5, 2:7, 2:9, 2:11</p> <p>essentially [1] - 15:23</p> <p>et [1] - 5:19</p> <p>Europe [1] - 13:17</p> <p>evidence [1] - 9:4</p> <p>evolving [1] - 35:25</p> <p>ex [5] - 48:21, 48:24,</p>

<p>49:1, 49:8, 50:21 exact [1] - 10:7 exactly [4] - 10:25, 16:1, 16:15, 30:19 example [2] - 17:4, 17:5 except [1] - 46:23 exercise [1] - 31:11 Exhibit [2] - 14:9, 14:24 exist [6] - 18:1, 20:21, 21:19, 21:20, 23:10, 24:8 existed [2] - 17:17, 24:6 existing [1] - 15:24 exists [1] - 31:23 expand [1] - 34:9 expeditious [1] - 32:18 expensive [1] - 47:5 expert [3] - 42:2, 44:4, 45:4 expertise [2] - 38:6, 45:3 experts [18] - 5:14, 38:5, 38:12, 38:16, 40:7, 40:9, 40:12, 40:15, 40:23, 41:21, 42:21, 43:1, 43:20, 44:2, 44:5, 44:7, 44:19, 44:23 explanation [1] - 18:6 exploration [1] - 41:11 extent [1] - 45:21</p>	<p>27:22, 29:5 final [1] - 44:15 financially [1] - 52:17 fine [3] - 37:12, 48:10, 49:10 FIRM [1] - 2:7 first [14] - 12:1, 13:7, 15:18, 16:4, 20:6, 23:4, 24:23, 25:8, 33:19, 35:14, 42:12, 44:12, 46:4, 47:2 FISHER [1] - 1:7 FLOM [1] - 1:21 flood [1] - 42:16 FOLLOWING [1] - 3:9 following [3] - 4:6, 24:10, 36:17 follows [1] - 31:6 footnote [5] - 20:9, 20:17, 24:13, 28:6, 30:12 FOR [1] - 1:1 foregoing [1] - 52:9 foreign [2] - 13:15, 13:23 formally [1] - 47:12 forth [1] - 52:12 forward [5] - 14:20, 38:25, 39:6, 41:14, 43:12 frankly [3] - 15:4, 20:18, 39:23 Frazier [1] - 23:3 FREDA [1] - 1:9 Friday [3] - 17:20, 37:16, 42:16 friends [1] - 36:19 front [2] - 16:12, 43:14 frustrating [1] - 22:2 full [1] - 47:2</p>	<p>global [2] - 34:1, 35:21 goodbye [1] - 50:5 Goodman [2] - 32:20, 47:16 GOODMAN [4] - 1:10, 19:1, 39:9, 49:21 GORDON [1] - 2:11 great [1] - 43:11 gritty [1] - 14:4 Group [1] - 34:22 groups [1] - 5:2 guess [8] - 7:15, 13:4, 13:9, 14:17, 27:4, 28:3, 30:17, 39:21</p>	<p>HONORABLE [2] - 1:9, 1:10 Honors [2] - 16:9, 43:14 hopefully [4] - 34:6, 34:10, 43:20, 43:21 hotly [1] - 48:6 hours [2] - 35:6 human [2] - 25:4, 42:15 hurricane [1] - 34:8</p>
F	G	H	I
<p>face [2] - 15:8, 33:15 facilities [1] - 5:19 fact [2] - 16:16, 39:7 fair [2] - 12:9, 42:24 fairly [1] - 15:3 familiar [2] - 29:25, 40:14 far [2] - 40:6, 41:6 fashion [2] - 26:15, 32:13 February [1] - 16:21 federal [1] - 43:15 few [3] - 37:10, 40:10, 51:5 fibers [1] - 45:6 FIELD [1] - 2:12 figure [4] - 26:5, 26:8, 29:19, 31:24 file [1] - 22:20 filed [4] - 14:14, 15:23, 28:2, 43:16 files [7] - 19:15, 19:24, 21:18, 23:15, 26:14,</p>	<p>Gallagher [1] - 19:21 game [1] - 12:9 Gene [1] - 21:4 general [10] - 10:6, 10:10, 10:20, 12:9, 26:14, 27:16, 38:20, 44:20, 44:24, 46:3 GEREL [1] - 1:14 given [5] - 4:3, 27:21, 31:9, 40:2, 51:2 glad [1] - 15:20</p>	<p>handicapped [1] - 34:7 handling [1] - 42:1 hard [1] - 27:15 HARDY [1] - 1:19 heads [1] - 49:18 heads-up [1] - 49:18 hear [4] - 36:3, 38:6, 47:12, 48:13 heard [2] - 40:16, 43:2 hearing [3] - 41:22, 42:20, 42:21 hearings [1] - 47:3 help [1] - 25:7 helpful [4] - 29:18, 30:21, 38:21, 41:5 helter [1] - 32:9 helter-skelter [1] - 32:9 hereby [1] - 52:8 hereinbefore [1] - 52:11 herring [1] - 19:6 Honor [53] - 5:22, 7:1, 8:23, 9:6, 9:10, 11:1, 13:14, 14:13, 15:17, 15:20, 16:1, 16:24, 17:22, 18:19, 20:20, 21:16, 22:5, 22:21, 22:23, 23:22, 24:2, 24:17, 24:22, 25:13, 25:17, 26:3, 26:21, 28:25, 29:16, 29:25, 32:1, 36:25, 38:8, 38:23, 39:3, 39:22, 40:13, 41:17, 42:21, 43:2, 43:8, 43:10, 43:12, 43:17, 43:23, 44:21, 46:1, 48:5, 48:8, 48:25, 49:10, 49:14, 49:25</p>	<p>i.e [1] - 9:25 idea [4] - 26:18, 33:14, 36:6, 50:6 identification [2] - 38:5, 44:13 identified [9] - 4:16, 38:17, 41:20, 42:14, 44:8, 44:13, 44:19, 46:7, 47:15 identify [9] - 26:10, 27:4, 31:20, 38:23, 39:18, 40:5, 43:1, 45:12, 45:20 identifying [5] - 13:11, 29:9, 29:11, 40:12, 44:5 identity [2] - 41:6, 44:23 Imerys [7] - 2:13, 6:15, 6:19, 8:8, 8:17, 10:1, 37:14 imminent [1] - 33:15 impact [2] - 4:23, 7:19 important [7] - 5:5, 15:20, 16:18, 17:9, 20:1, 21:17, 24:2 impression [2] - 22:3, 22:12 IN [2] - 1:4, 3:10 in-state [1] - 14:15 inability [1] - 44:1 Inc [1] - 21:6 include [1] - 36:7 included [2] - 13:25, 15:3 includes [1] - 4:17 including [1] - 19:22 increasing [1] - 11:8 indemnity [3] - 9:24, 10:2, 10:11 indicate [1] - 27:1 indicated [3] - 24:13, 38:1, 40:13 individual [2] - 29:12,</p>

<p>37:9 individuals [11] - 25:12, 26:13, 27:11, 27:20, 28:8, 28:11, 28:17, 28:18, 29:4, 31:10, 31:14 influence [1] - 4:25 informally [2] - 47:9, 47:21 information [6] - 4:17, 5:23, 28:20, 29:2, 33:6, 40:7 initial [1] - 15:5 initials [1] - 25:10 injunctions [1] - 36:10 inquiry [1] - 18:3 instance [4] - 5:1, 23:21, 23:23, 26:12 instead [4] - 4:6, 4:8, 28:17, 36:10 instructed [2] - 16:24, 16:25 instructions [3] - 30:23, 30:24, 31:18 intent [1] - 4:9 interest [1] - 4:21 interested [5] - 39:13, 43:13, 43:25, 52:17 interviewed [1] - 19:15 investigations [1] - 37:16 involve [2] - 43:5, 43:7 involved [3] - 4:25, 5:2, 15:12 involving [1] - 10:4 irrelevant [1] - 19:5 IS [1] - 3:9 isolate [1] - 31:20 issue [43] - 5:4, 5:5, 6:25, 7:9, 9:6, 9:11, 9:17, 11:15, 13:14, 13:22, 14:4, 15:4, 16:21, 17:16, 17:22, 18:8, 18:19, 20:2, 22:24, 23:12, 24:7, 30:3, 32:4, 33:4, 34:2, 34:8, 34:25, 35:1, 36:15, 37:14, 38:11, 40:20, 40:22, 41:9, 41:12, 42:10, 42:11, 42:19, 47:1, 48:6, 48:19, 50:1, 50:11 issued [1] - 16:13 issues [20] - 5:7, 7:13,</p>	<p>7:17, 10:18, 11:3, 13:2, 13:10, 15:12, 18:22, 24:19, 27:2, 31:22, 32:7, 32:24, 34:24, 36:9, 36:20, 39:17, 42:23, 43:11 itself [3] - 19:8, 22:24, 33:4</p> <p style="text-align: center;">J</p> <p>J&J [11] - 4:17, 5:1, 5:20, 6:14, 6:17, 7:2, 7:4, 15:14, 23:15, 28:17, 30:2 Jefferson [1] - 21:9 JERSEY [1] - 1:1 Jersey [1] - 52:8 job [2] - 18:12, 28:5 JOHN [1] - 1:21 JOHNSON [2] - 1:4 Johnson [8] - 1:22, 9:25, 10:1, 21:7, 37:6 joined [1] - 14:19 joint [2] - 13:17, 13:22 Judge [26] - 10:9, 10:21, 14:5, 18:16, 23:13, 26:4, 32:4, 32:10, 32:20, 33:19, 33:20, 39:7, 39:11, 39:16, 40:5, 43:12, 47:3, 47:8, 47:15, 47:19, 48:20, 48:25, 49:16, 49:19, 49:21, 50:10 JUDGE [85] - 4:2, 4:5, 5:17, 6:5, 6:10, 6:16, 6:23, 7:2, 7:14, 7:23, 8:6, 8:15, 8:18, 8:22, 9:19, 10:5, 10:23, 11:6, 11:11, 11:15, 11:19, 12:4, 12:7, 12:13, 12:23, 14:2, 14:17, 14:23, 17:15, 17:25, 19:1, 20:10, 20:16, 20:24, 21:23, 24:21, 24:24, 25:7, 25:14, 25:18, 25:25, 26:4, 26:22, 28:3, 28:15, 28:23, 29:1, 29:14, 29:18, 30:2, 30:15, 32:2, 34:3, 34:12, 35:17, 35:20, 36:3, 36:18, 37:3, 37:8, 37:12, 37:19, 37:24, 39:9, 41:16, 44:3, 44:22, 45:1,</p>	<p>45:14, 45:19, 46:6, 46:15, 46:19, 47:6, 48:10, 48:15, 48:18, 49:5, 49:12, 49:20, 49:21, 50:3, 50:14, 51:9, 51:12 judge [1] - 37:15 Judicial [1] - 21:8 jump [1] - 16:2</p> <p style="text-align: center;">K</p> <p>keep [1] - 29:5 kept [1] - 26:13 key [1] - 21:16 keyed [1] - 22:11 kind [3] - 7:3, 42:15, 47:23 kinds [2] - 23:8, 26:15 knowing [1] - 21:22 knowledge [2] - 4:17, 34:24 known [2] - 24:3, 42:15</p> <p style="text-align: center;">L</p> <p>label [1] - 26:9 labeled [2] - 25:10, 30:11 labor [1] - 22:17 language [5] - 16:11, 46:25, 47:22, 48:15, 50:8 lapse [1] - 38:24 large [3] - 25:3, 25:21, 28:21 last [9] - 4:10, 12:12, 12:13, 18:21, 24:9, 39:3, 42:12, 46:22 lawyer [2] - 26:2, 35:13 lawyers [10] - 30:9, 30:21, 31:2, 34:17, 34:23, 35:3, 35:5, 36:8, 36:11, 41:25 lay [1] - 35:25 least [4] - 24:11, 26:25, 28:6, 45:23 leave [5] - 10:8, 10:12, 11:13, 38:20, 47:9 legacy [6] - 25:3, 25:21, 27:25, 28:13, 28:21 LEIGH [1] - 1:13 letter [10] - 4:7, 13:18, 13:22, 17:7, 17:18, 17:19, 17:20, 18:23,</p>	<p>24:9, 24:13 liability [1] - 10:3 liaison [1] - 34:23 likely [1] - 48:7 limit [1] - 44:12 limited [3] - 4:12, 10:16, 15:4 limits [1] - 12:15 lines [3] - 46:22, 46:23, 46:24 listed [1] - 14:9 litigating [1] - 23:11 litigation [14] - 15:7, 17:7, 20:25, 21:2, 25:23, 26:16, 26:19, 26:24, 27:4, 27:6, 27:12, 28:1, 33:15, 42:1 Litigation [1] - 34:22 litigations [1] - 33:12 live [1] - 42:23 located [1] - 25:5 location [2] - 17:21, 25:5 LOCKE [1] - 2:6 logs [2] - 6:13, 6:23 LOIS [1] - 1:10 Look [1] - 35:4 look [11] - 10:13, 18:21, 19:7, 19:10, 20:8, 20:11, 23:22, 30:15, 44:8, 47:6 looked [4] - 23:16, 23:18, 23:19, 32:8 looking [1] - 47:24 looks [1] - 39:23 LORNA [1] - 2:10</p> <p style="text-align: center;">M</p> <p>Magistrate [2] - 26:4, 33:19 maintained [5] - 26:11, 27:21, 28:11, 31:14, 31:19 maintaining [2] - 27:10, 28:18 manner [1] - 30:12 marching [1] - 40:3 MARK [1] - 2:10 marked [1] - 20:8 market [1] - 9:15 MARKETING [1] - 1:4 master [6] - 14:3, 18:12, 32:18, 46:16, 48:4, 49:8 materials [1] - 24:18</p>
---	---	---	---

<p>matter [2] - 16:15, 21:5 MATTER [1] - 3:11 matters [6] - 4:23, 10:6, 10:16, 10:20, 11:4, 12:17 MDL [4] - 37:8, 37:10, 37:11, 41:25 MEAGHER [1] - 1:21 mean [3] - 7:7, 49:14, 50:4 meaning [1] - 46:24 meantime [1] - 23:11 measures [1] - 33:18 meeting [3] - 37:17, 39:7, 39:13 meetings [1] - 7:5 Mehaffey [1] - 15:1 Mehaffey-Weber [1] - 15:1 memo [17] - 15:1, 15:2, 17:4, 18:24, 19:8, 19:10, 20:9, 20:10, 20:12, 22:19, 22:24, 22:25, 23:15, 25:13, 27:5, 30:8, 33:4 memory [1] - 13:24 mesothelioma [1] - 37:5 met [2] - 25:1, 46:18 MICHELLE [1] - 1:14 might [3] - 41:3, 44:25, 46:9 mills [1] - 5:18 mine [3] - 6:1, 6:2, 6:8 Mines [1] - 13:25 mines [9] - 5:18, 5:21, 5:23, 6:13, 6:14, 6:15, 6:24, 7:2, 7:4 ministerial [1] - 50:22 minutes [1] - 37:21 missed [1] - 23:18 missing [2] - 17:24, 50:15 Missouri [3] - 41:20, 42:4, 46:8 modify [1] - 47:22 Molinar [1] - 19:23 moment [6] - 11:24, 14:25, 18:13, 38:10, 40:25, 44:1 month [2] - 32:15, 32:23 monthly [1] - 19:22 months [2] - 18:18, 40:11</p>	<p>morning [2] - 24:14, 39:15 most [1] - 40:14 motion [3] - 21:3, 21:14, 47:23 move [1] - 43:12 moved [1] - 38:25 moving [3] - 13:21, 32:17, 41:14 MR [38] - 6:21, 7:1, 9:10, 10:19, 15:17, 16:9, 17:18, 18:19, 19:4, 20:11, 20:13, 20:20, 21:16, 21:25, 24:22, 25:1, 25:13, 25:17, 25:19, 26:2, 26:20, 27:25, 28:13, 28:19, 28:25, 29:13, 29:16, 29:24, 30:7, 32:1, 34:13, 35:19, 35:23, 36:14, 36:24, 37:4, 37:9, 37:15 MS [54] - 5:12, 5:22, 6:7, 6:15, 7:8, 7:22, 8:1, 8:9, 8:17, 8:20, 8:21, 8:23, 9:23, 11:1, 11:7, 11:12, 11:16, 12:3, 12:5, 12:8, 12:21, 13:13, 14:12, 14:21, 21:13, 33:23, 34:5, 35:24, 36:20, 38:8, 39:11, 41:17, 43:2, 44:21, 44:23, 45:11, 45:17, 45:25, 46:18, 46:20, 48:2, 48:5, 48:9, 48:11, 48:14, 48:17, 48:19, 48:25, 49:10, 49:14, 49:25, 50:9, 51:5, 51:11 museum [6] - 33:21, 34:1, 34:19, 35:11, 35:21, 42:11 must [1] - 15:5 MY [1] - 3:10 Myers [1] - 14:7</p>	<p>need [16] - 5:14, 5:15, 12:6, 12:10, 13:5, 28:5, 29:1, 30:20, 31:10, 31:16, 31:24, 32:25, 33:6, 33:17, 42:21, 46:10 needs [1] - 50:19 never [1] - 6:25 New [1] - 52:8 NEW [1] - 1:1 new [6] - 33:24, 40:12, 40:15, 40:17, 42:10, 46:6 next [4] - 32:2, 32:23, 48:18, 51:4 nice [1] - 26:22 night [2] - 42:17, 46:22 nitty [1] - 14:4 nitty-gritty [1] - 14:4 NJ [1] - 1:8 NO [1] - 1:2 nobody [1] - 29:21 non [1] - 41:12 non-asbestos [1] - 41:12 none [1] - 9:15 normally [1] - 4:7 notebooks [3] - 19:14, 19:21, 23:14 NOTES [1] - 3:10 notes [1] - 18:21 nothing [1] - 12:13 notice [6] - 44:16, 49:22, 50:1, 50:19, 50:23, 51:2 number [5] - 4:18, 8:14, 21:7, 25:22, 36:15</p>	<p>obviously [5] - 26:25, 32:20, 38:12, 48:12, 50:15 October [4] - 32:15, 39:8, 39:10, 39:14 OF [3] - 1:1, 1:4, 3:10 offer [1] - 34:14 office [1] - 22:18 OFFICIAL [2] - 1:25, 3:16 Official [1] - 52:6 official [1] - 37:15 once [3] - 11:21, 29:6, 45:19 one [30] - 5:9, 15:9, 15:13, 15:16, 18:19, 18:22, 19:10, 21:2, 21:14, 24:6, 27:1, 27:3, 31:1, 33:1, 34:20, 35:8, 43:3, 43:14, 43:19, 43:21, 45:5, 45:7, 47:2, 47:7, 47:16, 49:15, 49:17, 50:19, 50:24 ones [4] - 4:15, 10:24, 31:20 Oot [2] - 23:3, 24:13 OOT [19] - 1:20, 10:19, 15:17, 17:18, 20:13, 24:22, 25:1, 25:13, 25:17, 25:19, 26:2, 27:25, 28:13, 28:19, 28:25, 29:13, 29:16, 29:24, 32:1 open [1] - 20:13 opine [2] - 5:15, 44:6 opinion [1] - 45:10 opinions [3] - 40:24, 44:6, 45:2 opportunity [1] - 50:1 optimistic [1] - 41:14 orally [1] - 47:25 order [8] - 4:7, 16:11, 23:13, 46:16, 48:8, 48:23, 49:3, 51:14 ordering [1] - 23:14 orders [1] - 40:4 ore [1] - 5:25 OREGON [1] - 2:12 original [1] - 35:2 originally [2] - 25:1, 30:13 originals [3] - 27:24, 28:10, 28:16 otherwise [1] - 49:12</p>
		O	
		<p>O'DELL [28] - 1:13, 5:12, 5:22, 6:7, 6:15, 7:8, 7:22, 8:1, 8:9, 8:17, 8:20, 8:23, 9:23, 11:1, 11:7, 11:12, 11:16, 12:3, 13:13, 14:12, 14:21, 48:5, 48:11, 48:17, 48:25, 49:10, 49:25, 51:5 O'Dell [3] - 22:17, 23:2, 50:11 object [2] - 50:2, 51:3 objection [2] - 13:21, 50:13 objections [1] - 13:5 obtaining [1] - 26:25</p>	
	N		
	<p>name [1] - 38:20 names [2] - 41:5, 45:13 NANCY [1] - 2:12 narrow [1] - 10:22 narrowly [1] - 4:22 nature [1] - 10:12 necessarily [2] - 9:18, 17:23</p>		

<p>outlined [1] - 17:20 outright [1] - 24:5 outstanding [1] - 13:14 ovarian [14] - 8:5, 10:4, 11:7, 11:9, 12:10, 20:3, 24:7, 26:17, 33:9, 33:13, 34:23, 41:10, 45:5, 45:6 overbroad [1] - 12:19 own [2] - 19:15, 19:23</p>	<p>permit [1] - 10:16 person [3] - 8:14, 11:22, 44:14 personal [2] - 19:23, 26:14 perspective [2] - 30:2, 33:1 pertinent [1] - 32:12 Pharmacy [1] - 21:6 Philadelphia [1] - 37:11 phone [6] - 4:10, 23:3, 24:14, 35:1, 35:6, 50:25 photocopied [4] - 25:14, 28:7, 30:9, 31:6 photocopies [4] - 21:18, 21:19, 27:23, 28:10 photocopy [3] - 30:11, 31:3, 31:8 photocopying [1] - 27:16 photoscopies [1] - 27:22 phrase [1] - 49:6 phrases [1] - 22:11 physical [1] - 19:3 piece [2] - 12:12, 12:13 Pisano [20] - 10:9, 10:21, 14:5, 18:16, 32:4, 32:10, 33:19, 39:7, 39:11, 39:17, 40:5, 43:12, 47:3, 47:8, 47:19, 48:20, 48:25, 49:19, 49:22, 50:10 place [6] - 15:16, 35:8, 39:25, 41:15, 48:8, 52:11 Placitella [2] - 33:23, 42:13 PLACITELLA [9] - 1:16, 1:16, 34:13, 35:19, 35:23, 36:14, 36:24, 37:4, 37:9 plaintiff [2] - 4:16, 14:15 Plaintiffs [1] - 1:17 plaintiffs [12] - 16:10, 16:12, 16:24, 23:25, 35:9, 38:9, 41:19, 42:1, 42:14, 42:25, 47:3, 48:23 plaintiffs' [2] - 34:22, 46:22 point [15] - 7:16, 9:9, 10:5, 10:19, 14:2, 20:20, 21:16, 23:15, 27:5, 36:1, 38:2, 39:21, 43:3, 43:8,</p>	<p>50:25 position [6] - 8:16, 8:23, 15:18, 21:10, 41:2, 45:12 possibly [1] - 22:20 post [1] - 22:19 post-dated [1] - 22:19 posture [1] - 11:13 POWDER [1] - 1:4 powder [7] - 5:24, 6:3, 8:4, 8:11, 9:11, 9:13, 11:8 power [1] - 49:15 practice [1] - 47:23 PRACTICES [1] - 1:5 prefaced [1] - 15:19 prefers [1] - 47:9 prepared [3] - 39:16, 41:21, 45:21 present [5] - 10:9, 18:16, 33:5, 39:16, 41:4 presented [2] - 32:13, 46:3 presenting [1] - 32:9 preservation [1] - 20:23 preserve [1] - 26:9 preserved [1] - 29:9 presumably [2] - 21:19, 30:12 pretty [1] - 23:17 prevented [1] - 39:5 privilege [1] - 18:23 privileged [4] - 15:23, 16:3, 16:8, 20:14 privileges [2] - 15:9, 27:7 problematic [1] - 36:9 procedure [1] - 12:24 proceed [4] - 11:12, 11:17, 11:18, 11:20 proceedings [3] - 41:24, 51:17, 52:10 process [4] - 5:18, 29:25, 36:24, 40:11 produce [5] - 21:22, 21:24, 23:14, 24:11, 44:2 produced [9] - 15:15, 17:6, 18:5, 18:25, 21:3, 26:15, 36:25, 37:2, 42:8 producing [1] - 15:15 product [7] - 5:13, 5:16, 7:18, 8:17, 9:12, 9:14, 9:18</p>	<p>production [4] - 11:17, 16:22, 22:7, 22:13 productions [1] - 17:2 productive [1] - 36:23 PRODUCTS [1] - 1:4 products [9] - 5:10, 5:24, 6:3, 7:10, 8:4, 8:12, 9:15, 9:22, 11:8 prohibit [1] - 48:24 proportionality [1] - 12:22 protected [4] - 15:9, 20:19, 33:16, 33:17 protections [2] - 15:14, 16:13 protracting [1] - 43:13 provide [2] - 38:19, 51:7 provided [4] - 22:4, 23:25, 27:24, 39:3 providing [1] - 38:10 pull [1] - 22:13 pulled [6] - 20:5, 20:6, 21:18, 21:21, 22:18, 24:12 purchased [1] - 9:21 purchases [1] - 9:25 purchasing [1] - 10:1 pure [10] - 8:22, 8:24, 9:1, 9:2, 9:4, 9:9, 9:15, 40:21, 45:8 purpose [1] - 17:8 purposes [1] - 38:17 PURSUANT [1] - 3:8 pursuing [1] - 14:11 put [6] - 20:25, 22:13, 29:6, 31:15, 32:16, 48:23 putting [1] - 32:18</p>
P			
<p>page [4] - 20:12, 22:8, 47:1, 48:20 paper [2] - 12:12, 12:14 papers [1] - 15:1 paragraph [4] - 19:10, 20:6, 44:25, 47:2 parameters [2] - 10:7, 12:11 Parfitt [1] - 38:6 PARFITT [9] - 1:14, 38:8, 39:11, 43:2, 44:21, 44:23, 45:11, 45:17, 45:25 part [8] - 4:19, 10:3, 22:10, 29:2, 29:8, 36:24, 40:14, 40:17 parte [5] - 48:21, 48:24, 49:1, 49:8, 50:21 particular [4] - 9:6, 16:19, 29:12, 45:4 particularity [1] - 17:1 particularly [2] - 15:6, 27:10 parties [14] - 12:10, 13:19, 39:14, 39:15, 39:25, 40:22, 48:6, 48:16, 48:22, 49:2, 49:3, 49:9, 49:23, 52:15 party [5] - 7:6, 13:9, 43:24, 49:15, 49:17 past [2] - 16:16, 22:22 PATRICK [1] - 1:20 pause [2] - 16:4, 30:5 PCPC [1] - 2:8 pending [1] - 21:7 PENNSYLVANIA [2] - 2:7, 2:12 people [5] - 19:9, 19:15, 37:4, 42:6, 46:2 performing [1] - 5:3 perhaps [1] - 4:22 period [1] - 19:8</p>	<p>permit [1] - 10:16 person [3] - 8:14, 11:22, 44:14 personal [2] - 19:23, 26:14 perspective [2] - 30:2, 33:1 pertinent [1] - 32:12 Pharmacy [1] - 21:6 Philadelphia [1] - 37:11 phone [6] - 4:10, 23:3, 24:14, 35:1, 35:6, 50:25 photocopied [4] - 25:14, 28:7, 30:9, 31:6 photocopies [4] - 21:18, 21:19, 27:23, 28:10 photocopy [3] - 30:11, 31:3, 31:8 photocopying [1] - 27:16 photoscopies [1] - 27:22 phrase [1] - 49:6 phrases [1] - 22:11 physical [1] - 19:3 piece [2] - 12:12, 12:13 Pisano [20] - 10:9, 10:21, 14:5, 18:16, 32:4, 32:10, 33:19, 39:7, 39:11, 39:17, 40:5, 43:12, 47:3, 47:8, 47:19, 48:20, 48:25, 49:19, 49:22, 50:10 place [6] - 15:16, 35:8, 39:25, 41:15, 48:8, 52:11 Placitella [2] - 33:23, 42:13 PLACITELLA [9] - 1:16, 1:16, 34:13, 35:19, 35:23, 36:14, 36:24, 37:4, 37:9 plaintiff [2] - 4:16, 14:15 Plaintiffs [1] - 1:17 plaintiffs [12] - 16:10, 16:12, 16:24, 23:25, 35:9, 38:9, 41:19, 42:1, 42:14, 42:25, 47:3, 48:23 plaintiffs' [2] - 34:22, 46:22 point [15] - 7:16, 9:9, 10:5, 10:19, 14:2, 20:20, 21:16, 23:15, 27:5, 36:1, 38:2, 39:21, 43:3, 43:8,</p>	<p>50:25 position [6] - 8:16, 8:23, 15:18, 21:10, 41:2, 45:12 possibly [1] - 22:20 post [1] - 22:19 post-dated [1] - 22:19 posture [1] - 11:13 POWDER [1] - 1:4 powder [7] - 5:24, 6:3, 8:4, 8:11, 9:11, 9:13, 11:8 power [1] - 49:15 practice [1] - 47:23 PRACTICES [1] - 1:5 prefaced [1] - 15:19 prefers [1] - 47:9 prepared [3] - 39:16, 41:21, 45:21 present [5] - 10:9, 18:16, 33:5, 39:16, 41:4 presented [2] - 32:13, 46:3 presenting [1] - 32:9 preservation [1] - 20:23 preserve [1] - 26:9 preserved [1] - 29:9 presumably [2] - 21:19, 30:12 pretty [1] - 23:17 prevented [1] - 39:5 privilege [1] - 18:23 privileged [4] - 15:23, 16:3, 16:8, 20:14 privileges [2] - 15:9, 27:7 problematic [1] - 36:9 procedure [1] - 12:24 proceed [4] - 11:12, 11:17, 11:18, 11:20 proceedings [3] - 41:24, 51:17, 52:10 process [4] - 5:18, 29:25, 36:24, 40:11 produce [5] - 21:22, 21:24, 23:14, 24:11, 44:2 produced [9] - 15:15, 17:6, 18:5, 18:25, 21:3, 26:15, 36:25, 37:2, 42:8 producing [1] - 15:15 product [7] - 5:13, 5:16, 7:18, 8:17, 9:12, 9:14, 9:18</p>	<p>production [4] - 11:17, 16:22, 22:7, 22:13 productions [1] - 17:2 productive [1] - 36:23 PRODUCTS [1] - 1:4 products [9] - 5:10, 5:24, 6:3, 7:10, 8:4, 8:12, 9:15, 9:22, 11:8 prohibit [1] - 48:24 proportionality [1] - 12:22 protected [4] - 15:9, 20:19, 33:16, 33:17 protections [2] - 15:14, 16:13 protracting [1] - 43:13 provide [2] - 38:19, 51:7 provided [4] - 22:4, 23:25, 27:24, 39:3 providing [1] - 38:10 pull [1] - 22:13 pulled [6] - 20:5, 20:6, 21:18, 21:21, 22:18, 24:12 purchased [1] - 9:21 purchases [1] - 9:25 purchasing [1] - 10:1 pure [10] - 8:22, 8:24, 9:1, 9:2, 9:4, 9:9, 9:15, 40:21, 45:8 purpose [1] - 17:8 purposes [1] - 38:17 PURSUANT [1] - 3:8 pursuing [1] - 14:11 put [6] - 20:25, 22:13, 29:6, 31:15, 32:16, 48:23 putting [1] - 32:18</p>
Q			
<p>questions [7] - 11:22, 28:9, 30:4, 30:15, 31:25, 42:6, 44:21 quite [1] - 15:10</p>			
R			
<p>raised [1] - 42:11 raising [1] - 13:2 range [2] - 19:20, 22:9 ranges [1] - 25:5 Ray [1] - 21:5 RE [1] - 1:4</p>			

<p> re [1] - 13:3 re-reviewing [1] - 13:3 reached [2] - 14:6, 51:6 reaction [1] - 15:5 read [2] - 15:1, 30:8 reading [2] - 20:13, 24:14 ready [1] - 51:14 real [4] - 14:18, 18:8, 24:17, 45:2 realize [1] - 16:5 really [17] - 5:6, 5:9, 7:20, 15:10, 16:5, 17:9, 17:11, 18:3, 20:19, 22:24, 32:5, 33:7, 36:23, 38:25, 42:18, 49:13 reason [8] - 4:19, 16:18, 17:9, 30:10, 32:18, 43:23, 45:25, 50:20 reasoned [2] - 27:9, 32:13 reasons [1] - 17:5 REATH [1] - 1:18 received [1] - 28:7 recommendation [1] - 18:17 recommendations [1] - 40:6 record [13] - 4:5, 19:9, 30:18, 36:1, 37:20, 37:22, 37:24, 37:25, 46:12, 46:13, 46:15, 51:15, 51:16 recorded [3] - 47:4, 48:3, 48:12 records [2] - 27:18, 31:19 recreate [2] - 22:6, 23:25 red [4] - 19:6, 46:22, 46:23, 46:24 redo [1] - 43:19 REES [1] - 2:11 reference [1] - 24:15 referenced [4] - 22:14, 22:25, 23:5, 23:7 references [2] - 26:12, 27:1 reflect [2] - 7:17, 25:11 reflected [1] - 28:6 reflecting [1] - 7:20 regard [8] - 6:18, 14:6, 14:8, 34:3, 38:11, 40:20, 41:11, 43:9 </p>	<p> regarding [2] - 5:23, 8:25 regulatory [3] - 13:15, 13:23, 19:13 relate [1] - 9:25 related [9] - 7:2, 7:17, 13:22, 15:18, 20:2, 20:7, 24:19, 28:1, 36:14 relates [4] - 7:8, 11:7, 12:9, 13:14 relating [2] - 8:3, 24:7 relation [2] - 11:1, 35:24 relative [2] - 52:13, 52:16 relevance [1] - 5:9 relevant [2] - 10:14, 32:12 relitigate [2] - 11:3, 11:14 reluctance [1] - 44:1 remaining [2] - 39:19, 42:23 remains [1] - 40:1 remand [1] - 14:11 remember [5] - 16:18, 33:20, 34:25, 36:18, 44:3 report [4] - 18:16, 41:3, 44:9, 44:15 REPORTER [2] - 1:25, 3:16 Reporter [2] - 52:7 reporter [4] - 47:4, 47:13, 48:1, 48:3 reports [6] - 23:20, 40:16, 41:7, 43:25, 44:4, 45:22 represent [1] - 23:16 representations [1] - 8:25 represented [5] - 22:4, 22:5, 23:12, 23:24, 40:10 representing [2] - 22:21, 22:22 request [9] - 7:12, 8:1, 13:13, 24:16, 35:2, 37:16, 48:5, 48:11, 49:16 requested [1] - 48:16 requests [7] - 10:9, 10:10, 12:18, 13:4, 13:20, 34:18, 42:16 requirements [1] - 20:23 research [1] - 19:13 </p>	<p> reserve [1] - 16:14 resident [1] - 14:14 resolution [2] - 32:19, 33:25 resolve [8] - 32:5, 34:10, 36:2, 36:20, 36:21, 42:23, 46:24, 47:21 resolved [2] - 39:6, 46:23 respond [1] - 45:15 response [2] - 17:19, 35:16 retained [1] - 30:13 retrieved [1] - 19:14 returned [2] - 29:4, 31:14 reverse [1] - 49:7 review [2] - 12:18, 47:15 reviewed [1] - 9:17 reviewer [1] - 25:4 reviewing [1] - 13:3 revised [1] - 51:7 ripe [1] - 32:24 rise [1] - 4:1 risk [1] - 11:9 risks [1] - 8:5 Rosetta [1] - 17:11 ROTH [1] - 1:16 route [1] - 32:22 RPR [1] - 1:24 Rs [1] - 33:3 rule [1] - 15:25 rules [4] - 12:21, 12:23, 12:24, 15:21 ruling [4] - 10:11, 12:15, 14:7, 47:12 rulings [1] - 47:24 Russoniello [4] - 3:15, 52:6, 52:23, 52:24 RUSSONIELLO [2] - 1:24, 3:16 </p>	<p> sampling [3] - 38:11, 42:10 save [1] - 32:23 scanned [5] - 25:20, 28:2, 28:14, 28:20, 29:6 scanning [1] - 31:12 School [1] - 13:25 scope [4] - 4:9, 4:10, 10:23, 38:14 searchable [1] - 28:21 seat [1] - 37:13 second [5] - 15:11, 45:11, 45:16, 47:2, 48:19 SECTION [1] - 3:8 see [7] - 9:16, 10:13, 29:16, 36:5, 44:7, 45:14, 45:22 seem [1] - 15:7 selection [1] - 31:7 selective [1] - 31:11 send [1] - 50:17 sense [2] - 47:8, 47:23 sent [4] - 17:7, 17:19, 23:20, 24:9 separate [1] - 11:24 SEPTEMBER [1] - 1:5 served [3] - 13:19, 21:4, 42:16 serves [1] - 13:24 set [5] - 25:10, 32:14, 41:17, 42:21, 52:11 sets [2] - 35:9, 46:23 SEYFARRTH [1] - 2:5 Sharko [2] - 12:4, 41:16 sharko [2] - 43:8, 43:9 SHARKO [18] - 1:18, 12:5, 12:8, 12:21, 21:13, 33:23, 34:5, 35:24, 36:20, 41:17, 46:18, 46:20, 48:2, 48:9, 48:14, 48:19, 50:9, 51:11 SHAW [1] - 2:5 sheets [1] - 21:12 SHERYL [1] - 2:7 SHOOK [1] - 1:19 show [1] - 9:2 Shower [4] - 7:15, 7:16, 37:7 side [1] - 49:3 sides [3] - 34:20, 39:1, 39:4 SILVER [4] - 2:10, 6:21, </p>
S			
<p> S/Vincent [2] - 3:15, 52:23 safer [3] - 5:12, 5:16, 8:10 safety [2] - 8:4, 8:17 sale [3] - 7:15, 7:18, 7:19 SALES [1] - 1:5 sample [1] - 42:14 samples [7] - 19:22, 34:4, 35:7, 35:15, 35:22, 37:14, 41:9 </p>			

<p>7:1, 37:15 similarly [1] - 31:17 simply [4] - 14:19, 22:12, 45:12, 50:4 sitting [1] - 40:9 situation [1] - 11:2 SKADDEN [1] - 1:21 skelter [1] - 32:9 SLATE [1] - 1:21 snapshot [2] - 17:12, 24:3 someone [1] - 11:20 sometimes [1] - 48:12 somewhere [1] - 31:15 sorry [2] - 4:13, 6:21 sought [1] - 30:13 sound [1] - 49:7 sounds [1] - 49:12 source [3] - 5:24, 6:3, 31:5 special [3] - 46:16, 48:4, 49:8 specialty [2] - 38:20, 44:24 specific [8] - 5:7, 6:8, 8:1, 10:8, 11:3, 13:2, 13:24, 38:10 specifically [3] - 7:12, 8:4, 9:24 specifics [3] - 10:13, 12:16, 36:4 spouse [1] - 21:5 spreadsheet [8] - 22:4, 22:8, 23:5, 23:7, 23:21, 23:24, 24:24, 25:6 stack [1] - 22:14 start [2] - 4:12, 32:17 started [2] - 40:11, 41:24 STATE [1] - 1:8 State [1] - 52:8 state [8] - 14:13, 14:15, 23:12, 23:13, 37:10, 44:1 states [1] - 5:15 STATES [2] - 1:1, 1:7 States [1] - 52:6 status [4] - 4:7, 16:20, 18:22, 23:19 STATUS [1] - 1:4 Steering [1] - 1:17 STENOGRAPHIC [1] - 3:10 stenographically [3] -</p>	<p>47:4, 48:3, 52:10 still [13] - 12:23, 14:11, 17:13, 18:5, 20:14, 27:18, 29:5, 29:22, 30:20, 35:17, 40:1, 41:8 stipulation [1] - 14:7 Stone [1] - 17:11 stop [1] - 19:1 STREET [1] - 1:8 stuck [1] - 44:17 studies [3] - 4:24, 5:3, 5:4 stuff [2] - 23:17, 29:15 subcommittees [1] - 8:3 subject [7] - 10:6, 10:16, 10:20, 12:17, 13:20, 47:19, 48:3 subjects [4] - 44:5, 44:8, 44:20, 45:9 submissions [1] - 15:13 submit [1] - 44:9 submitted [1] - 15:2 subpoena [1] - 14:1 subpoenas [2] - 13:9, 13:20 subset [1] - 46:9 subsidiaries [1] - 21:8 substantive [3] - 50:15, 50:20, 51:2 substituted [1] - 8:12 sufficient [1] - 29:2 suggest [1] - 9:4 suggested [1] - 8:10 suggesting [1] - 18:11 summary [1] - 45:2 surely [1] - 30:21 Susan [2] - 35:4, 36:15 SUSAN [1] - 1:18 system [4] - 20:18, 25:10, 25:15, 31:5</p>	<p>8:4, 8:11, 9:11, 9:13, 11:8 talks [1] - 22:9 targeted [1] - 7:12 task [1] - 49:13 technology [1] - 25:24 tee [1] - 10:17 tee-up [1] - 10:17 teed [1] - 14:5 teed-up [1] - 14:5 term [1] - 17:10 terms [2] - 11:16, 13:13 terribly [1] - 38:21 test [1] - 41:9 testifying [1] - 44:25 testing [2] - 9:2, 19:22 Texas [1] - 21:9 Thames [1] - 21:6 THE [7] - 1:1, 1:9, 1:10, 2:7, 3:8, 3:10, 4:1 themselves [4] - 18:1, 28:24, 30:14, 31:13 theories [1] - 42:2 theory [1] - 10:20 thereafter [1] - 45:18 they've [2] - 17:2, 41:20 thinks [1] - 47:11 third [2] - 7:6, 13:9 third-party [2] - 7:6, 13:9 THOMAS [1] - 2:6 THORNTON [1] - 2:12 threat [1] - 27:6 threatened [2] - 33:12, 33:13 three [5] - 14:12, 14:21, 16:16, 18:21, 22:22 timelines [1] - 12:1 timing [1] - 38:1 Tisi [2] - 9:8, 16:9 TISI [11] - 1:15, 9:10, 16:9, 18:19, 19:4, 20:11, 20:20, 21:16, 21:25, 26:20, 30:7 tisi [1] - 17:19 TITLE [1] - 3:8 TO [2] - 3:8, 3:9 today [16] - 10:11, 10:14, 11:4, 11:13, 12:2, 12:16, 18:11, 21:14, 29:19, 30:18, 32:6, 33:9, 39:2, 39:3, 39:25, 41:15 together [1] - 32:16 took [3] - 17:21, 28:16,</p>	<p>28:17 topic [2] - 38:13, 38:21 topics [2] - 5:8, 46:3 trade [2] - 13:16, 13:23 transcript [1] - 52:9 TRANSCRIPT [2] - 1:4, 3:9 TRANSCRIPTION [1] - 3:10 tremendous [1] - 39:4 TRENTON [1] - 1:8 trial [2] - 43:4 tried [4] - 38:25, 41:23, 46:7, 46:8 true [2] - 24:22, 52:9 try [8] - 34:14, 35:6, 35:12, 35:20, 36:2, 39:25, 41:19, 42:22 trying [9] - 11:25, 18:14, 26:5, 26:8, 29:19, 31:24, 32:6, 36:14, 38:22 twice [3] - 35:10, 43:20, 43:21 two [12] - 13:15, 19:17, 23:10, 28:9, 30:7, 30:25, 31:12, 34:20, 42:12, 44:21, 46:23, 47:1</p>
U			
<p>U.S [2] - 1:25, 3:16 U.S.C [1] - 3:8 ultimate [1] - 42:19 ultimately [2] - 33:1, 47:14 under [5] - 6:17, 15:25, 22:3, 25:13, 35:8 understood [2] - 17:25, 30:14 undertaken [1] - 33:18 unfortunately [1] - 12:6 United [1] - 52:6 UNITED [2] - 1:1, 1:7 universe [2] - 31:9, 34:24 up [18] - 10:17, 14:5, 18:20, 18:22, 22:2, 24:10, 25:10, 32:15, 35:13, 35:20, 36:16, 41:10, 42:23, 47:9, 49:18, 49:21, 50:7 update [1] - 36:22 usage [1] - 6:9 USDJ [1] - 1:9 USMJ [1] - 1:10</p>			

V	35:17, 35:20, 36:3, 36:18, 37:3, 37:8, 37:12, 37:19, 37:24, 41:16, 44:3, 44:22, 45:1, 45:14, 45:19, 46:6, 46:15, 46:19, 47:6, 48:10, 48:15, 48:18, 49:5, 49:12, 49:20, 50:3, 50:14, 51:9, 51:12
vacations [1] - 34:8 Valeant [1] - 7:16 various [3] - 19:21, 20:7, 31:14 version [3] - 41:22, 46:21, 51:7 veto [1] - 49:15 view [1] - 36:23 views [1] - 18:15 VINCENT [2] - 1:24, 3:16 Vincent [2] - 52:6, 52:24 violate [1] - 15:25 violation [1] - 15:19 VIRGINIA [2] - 1:14, 1:15 volume [1] - 25:3	women [1] - 6:9 wonderful [1] - 51:12 worded [1] - 49:15 works [3] - 26:5, 45:23, 50:10 Writs [1] - 34:15 written [6] - 11:25, 12:2, 13:4, 13:7, 38:3, 47:18 wrote [1] - 8:10
W	Y
waiver [1] - 15:18 wants [9] - 23:22, 33:2, 33:25, 34:6, 47:3, 47:9, 47:12, 50:10, 50:20 warning [1] - 8:13 WASHINGTON [3] - 1:20, 1:21, 2:6 watching [1] - 34:8 Weber [1] - 15:1 week [5] - 4:10, 24:10, 34:7, 39:3, 42:12 weeks [1] - 23:10 weighing [1] - 50:7 whole [1] - 21:10 Williams [5] - 15:3, 20:25, 21:4, 26:23, 29:22 witnesses [1] - 42:5 WOLFSON [83] - 1:9, 4:2, 4:5, 5:17, 6:5, 6:10, 6:16, 6:23, 7:2, 7:14, 7:23, 8:6, 8:15, 8:18, 8:22, 9:19, 10:5, 10:23, 11:6, 11:11, 11:15, 11:19, 12:4, 12:7, 12:13, 12:23, 14:2, 14:17, 14:23, 17:15, 17:25, 20:10, 20:16, 20:24, 21:23, 24:21, 24:24, 25:7, 25:14, 25:18, 25:25, 26:4, 26:22, 28:3, 28:15, 28:23, 29:1, 29:14, 29:18, 30:2, 30:15, 32:2, 34:3, 34:12,	year [2] - 19:8, 41:18 years [2] - 24:20, 28:2
	Z
	Zazenski [2] - 8:8, 8:9 zone [1] - 6:9